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EXTRACTS FROM OPINIONS

Rt. Hon'ble Dr. Sir SHADILAL, Kt., M.A., LL.D. (Privy Councillor), late Chief Judge of the Lahore High Court — ....." The law has been fully noted under different heads, and the book is likely to be the *locus classicus* on the subject. I am glad you have been able to find time to write such an exhaustive commentary on the subject of Court-Fees and Jurisdiction."

The Hon'ble Sir N. N. SIRCAR (Law Member, Government of India), late Advocate-General of Bengal:—....." I am sure the treatise will be the standard book of reference.

The treatise is comprehensive, the notes are full and well arranged, and I expect it to be of great assistance to Courts and practitioners."

Justice K. Sundaram Chettiar, Madras High Court.—"I appreciate the care and attention bestowed on this work. . . The Notes are clear and lucid even on points generally considered to be abstruse, and the arrangement is remarkably methodical. . . You have rendered a good service to the legal profession".

Khan Bahadur Saad-ud-din Khan, B.A., LL.B. (Retired Addl. Judicial Commissioner, N.-W.F.P.) writes in the Foreword.—The learned author who is well known in the legal world and has got an established position as an authoritative commentator has devoted remarkable research, industry and intelligence to this task. The Commentary is extremely learned, well planned and beautifully executed. It is not merely a mere conglomeration of cases collected in a hap-hazard fashion. The subject is scientifically arranged. Case-law has been judiciously classified, intelligently discussed and real *ratio decidendi* bruoght out in simple and plain language. The conflict of authority is again treated in a way not often to be found in commentaries of Indian Acts produced in any number now-a-days in India.

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THE LAW REGULATING

COURT-FEES AND JURISDICTION

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THE LAW REGULATING
COURT-FEES & JURISDICTION

BEING

An Exhaustive, Analytical, Critical and Explanatory Commentary
on the Court-Fees Act, 1870, and Suits Valuation Act, 1887,
with all Rules, Notifications, Amendments, etc.

BY

RAI BAHADUR DIWAN CHAND OBHRAI, B.A., LL.B.
Advocate, High Court, Lahore and N.-W.F. Province, Peshawar
(Ex-Government Pleader and Public Prosecutor, Peshawar)

AUTHOR OF

"The Punjab References", "The Punjab Ready References" Series, "The Privy Council References", "The Law of Mercantile and Legal Arbitrations in India", "The Principles of the Law of Negotiable Instruments in India", etc.

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BY
SHRI AMAR NATH RAINA
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Former Advocate General,
Jammu and Kashmir.

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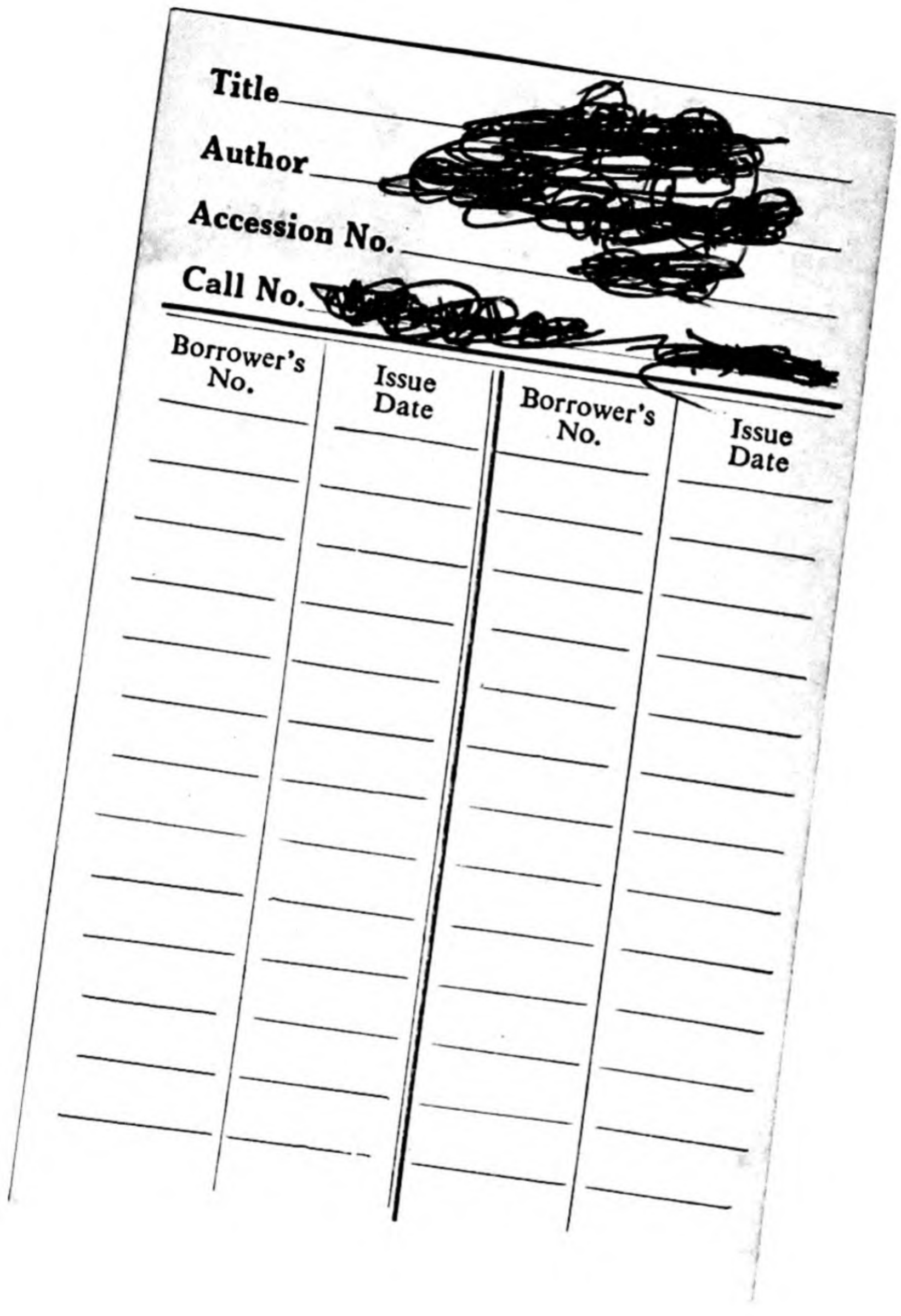
DEDICATED

TO

MY BELOVEDMOST WIFE

Shrimati LAJWANTI OBHRAI

In loving gratitude
for her unfailing devotion
and kindly support in the
accomplishment of this self-imposed task
as an humble service
to the legal profession.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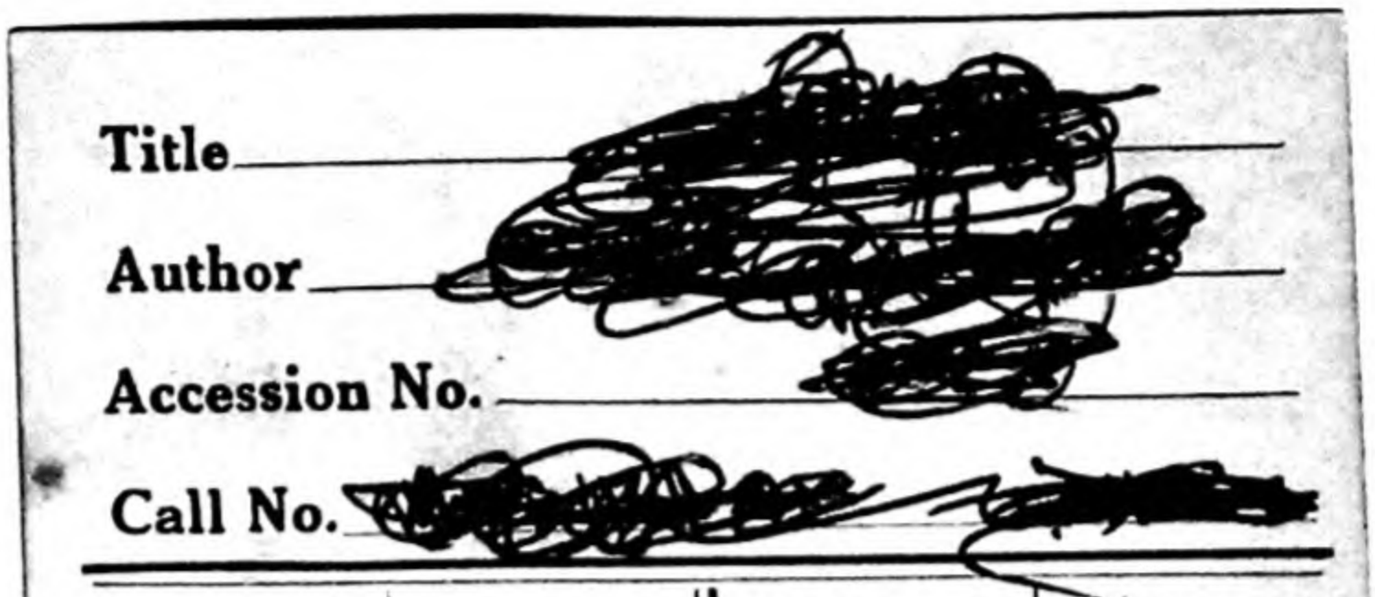
FOREWORD

BY

KHAN BAHADUR SAAD-UD-DIN KHAN, B.A., LL.B.
(Retired Addl. Judicial Commissioner, N.-W.F.P.)

THE Court-Fees Act, though a statute of supreme importance, is generally neglected both by the profession and the subdual judiciary. The amount of case-law and the conflict of views on several questions as expressed by various High Courts in India are sufficient to impress both the importance and complexity of the subject. The exhaustive commentary critical, analytical and explanatory brought out by Rai Bahadur L. Diwan Chand is a monumental work and is the last word on this subject. The learned author who is well known in the legal world and has got an established position as an authoritative commentator has devoted remarkable research, industry and intelligence to this task. The Commentary is extremely learned, well planned and beautifully executed. It is not merely a mere conglomeration of cases collected in a hap-hazard fashion. The subject is scientifically arranged. Case-law has been judiciously classified, intelligently discussed and real *ratio decidendi* brought out in simple and plain language. The conflict of authority is again treated in a way not often to be found in commentaries of Indian Acts produced in any number now-a-days in India. An honest effort has been made to try to reconcile the apparent conflict and where the conflict is real each view has been admirably criticized and fully discussed on its merits. In short, the commentary leaves nothing to be desired and will, I am sure, find a very prominent place in all Legal Libraries worth the name.

Saad-ud-Din
3/7/34



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PREFACE

THIS treatise, on the law regulating the valuation of suits, for purposes of Court-fees and jurisdiction, aims at providing a comprehensive work for use of Courts and offices, on this important branch of the law; but is, at the same time, intended to be an exhaustive, critical, analytical and explanatory commentary on the provisions of the Court-Fees Act (VII of 1870); and, the Suits Valuation Act (VIII of 1887), for use of legal practitioners in India, with certain distinctive features enhancing its utility as a work of daily reference.

The several appendices collect all the useful information which practitioners and commercial people require in connection with the question of Court-fees and valuation of suits.

The case-law given in the foot-notes and in the illustrattions covers the entire field from earliest reports in Indian High Courts, up-to-date, and the author has made his best effort to deduce principles and propositions of law from the conflicting mass of authorities, which may be accepted as a safe guide for Courts and practitioners.

The elaborate Subject Index or Ready Referencer is intended to be a unique feature of this publication.

An abbreviated Edition of this work has been issued to meet the demand for a cheap, but reliable handy manual, and to serve as a suitable text-book for the use of law students in colleges.

My best thanks are due to the Madras Law Journal Press for the extremely neat and satisfactory get up of the volume.

ABBOTTABAD,
2nd August, 1934.

DIWAN CHAND OBHRAI.

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SARWANAND KAUL.
SRINAGAR
VAKIL HIGH COURT

INTRODUCTION

OR

SUMMARY.

1. SCOPE AND OBJECTS.—The Court-Fees Act begins without a preamble. Its object is to lay down rules for the collection of stamp duties on certain documents to be filed or used in Courts or public offices. The Act is essentially a fiscal and taxing enactment passed not to arm a litigant with a weapon of technicality against his opponent, but to secure revenue for the benefit of the State. The revenue derived from judicial stamps is now designated Court-fees.

2. EXTENT OF APPLICATION.—The Act extends to the whole of British India. The Act is in operation in Aden and in Baluchistan Agency territories, and has been extended to British Baluchistan, Santhal Parganas, Angul Sub-division and to Upper Burma generally, to Chittagong Hill tracts and the Pargana of Manpur. It is also in force in the scheduled districts and in certain Hill districts and sub-divisions of Assam.

The Act applies in the Native State of Mysore as per Instrument of Rendition, 1881, and in the Hyderabad Assigned Districts, the Hyderabad Residency Bazars, the Cantonment of Secunderabad and the Civil and Military Station, Bangalore.

3. EXEMPTIONS.—The Act does not apply to applications under S. 105 (1) and (2) of the Bengal Tenancy Act, 1885; and to proceedings before Settlement Officers, under the Santhal Parganas Settlement Regulation III of 1872, S. 8, as amended.

4. HISTORICAL.—Prior to 1860, Bengal, Bombay and Madras had certain regulations governing the subject. Then followed Acts XXXVI of 1860; X of 1862; XI of 1863; X of 1865; XVIII of 1863 and XXVI of 1867. The Court-Fees Act VII of 1870 was an amending and consolidating Act, which has itself been modified by several repeals and amendments, especially after the Devolution Act XXXVIII of 1920, empowering the various provinces to fix their own rates and rules concerning Court-fees, by means of local Acts and Regulations.

5. RETROSPECTIVE OPERATION OF THE ACT.—Ordinarily changes of law relating to procedure have retrospective effect and must apply to all proceedings or actions commenced before or after the passing of the Act: but, "provisions which touch a right in existence at the passing of the statute are not to be

applied retrospectively in the absence of express enactment of necessary intendment." The right of appeal belonging to a suitor is held to be a vested right, and not a mere matter of procedure: and Court-fees would be payable on a plaint in accordance with the provisions of the Act as it stood at the date of the institution of the suit, meaning its presentation to the proper Court.

6. **SCHEME OF THE ACT.**—The Court-Fees Act, 1870, as amended by subsequent legislation, is divided into seven chapters. Chapter I is Preliminary. Chapter II consists of three sections dealing with fees in the High Courts, and in the Court of Small Causes at the Presidency towns. Chapter III deals with "fees in other Courts and in public offices." S. 6 is the charging section which declares that no plaint, or memorandum of appeal, shall be received unless in respect of it there be paid a fee of an amount not less than that indicated in Schs. I and II, as the proper fee for such documents. Schs. I and II endeavour to give a comprehensive classification of the various kinds of suits, and also provide that the proper fee payable on some documents shall vary according to the Court in which they are filed, and that in regard to others there shall be no such variance. Plaints and appeals in the suits specified in Sch. II shall bear the fixed fees prescribed, while in Sch. I are specified various suits in which the plaints and appeals shall bear an *ad valorem* fee. No question of valuation arises if the fee is a fixed fee: but if an *ad valorem* fee is leviable upon the particular category of the suit, then the Court will proceed to value the subject-matter in dispute, or fix the amount of the relief claimed according to rules for computation set out in Ss. 7 and 8 of the Act. If a local or further investigation is necessary, the Court may proceed under S. 9. Ss. 9 and 10 provide machinery for ascertaining the value of land and houses, the subject-matter of a suit when the Court thinks that the value has been wrongly estimated to the detriment of the revenue. This computation is the value referred to in S. 11 of Chapter III, and the Court's adjudication on a question relating thereto is final in respect of a plaint or memorandum of appeal under the first clause of S. 12. A decision on a question of *category* is not final within the meaning of S. 12 (1), while a decision on a question of *valuation*, pure and simple, is final as between the parties to the suit. The second clause of S. 12, however, gives a Court of appeal power to collect deficit Court-fees in respect of fees payable in subordinate Courts. Ss. 13, 14 and 15 deal with refund of fee paid in the suit or in appeal, or on application for review of judgment, on reversal or modification of Court's former decision on ground of mistake. Chapter III is a piece of patch-work legislation, and it contains S. 17 relating to suits, embracing two or more distinct subjects chargeable with aggregate fees; S. 18 dealing with written examinations of complainants, and S. 19 providing for "exemption of certain documents." Chapter III-A has been wedged in Chapters III and IV of the Act, as originally framed, and this Chapter III-A contains provisions 19-A to 19-K headed "Probates, Letters of Administration and Certificates of Administration."

Chapter IV deals with rules and tables of "Process-fees," and is concerned with the number of peons in District and Subordinate Courts, in Mofussil Small Cause Courts, and in Revenue Courts. Chapter V deals with the mode of levying fees, and Chapter VI is headed "Miscellaneous," and provides for repayment of fees paid on applications to Criminal Courts; the admission in criminal cases of documents for which proper fee has not been paid; the sale of stamps; power to reduce or remit fees, and, lastly, the saving of fees to certain officers of High Courts.

CHAPTER II.

HIGH COURTS AND PRESIDENCY SMALL CAUSE COURTS.

7. **SECTION 3.—ORIGINAL SIDE OF THE HIGH COURTS AND PRESIDENCY SMALL CAUSE COURTS.**—SECTION 3 provides for the levy of fees in High Courts on their original sides, and in Presidency Small Cause Courts. Such fees leviable on the original side of a Chartered High Court, and in the Presidency Small Cause Courts are prescribed by enactments other than the Court-Fees Act; and S. 3 merely regulates the mode of collection. S. 3 is not a charging section. The schedules and subsidiary parts of the other chapters of the Court-Fees Act have no application to the High Court in the exercise of its ordinary original civil jurisdiction. THE MODE OF COLLECTION of Court-fees on plaints and applications in respect of certain proceedings covered by S. 3 is in the manner provided hereinafter (*viz.*, in Chapter V of the Act). The fees are, therefore, to be collected by stamps (S. 25, Court-Fees Act); which shall be impressed or adhesive, or partly impressed, and partly adhesive, as the Governor-General of India in Council may, by notification in the *Gazette of India*, from time to time direct.

8. **SECTION 4.**—SECTION 4 of the Court-Fees Act is mandatory, and it prohibits a Court from filing, recording or receiving an improperly stamped document of the class specified in the first or second schedule of the Act.

9. **"DOCUMENT."**—A MEMORANDUM OF APPEAL is a document included in the first and second schedules to the Court-Fees Act within the meaning of Ss. 4, 25, 28 and 30 of the Act. Similarly, an APPLICATION FOR A REVIEW OF JUDGMENT is to be sufficiently stamped before it can be filed or recorded in, or received by the High Court. S. 149, CIVIL PROCEDURE CODE, however enacts that where the whole or any part of any fees prescribed for any document by the law for the time being in force relating to Court-fees has not been paid, the Court may, in its discretion, at any stage allow the person, by whom such fee is payable, to pay the whole or part, as the case may be of such Court-fee; and, upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance. This section applies to all documents chargeable with Court-fees under the Court-Fees Act, such as plaints, memo-

randa of appeal, or of cross-objections, applications for review of judgment, written statements, pleading, a set-off, or counter-claim. But, a memorandum of objections under O. 41, R. 26, is not mentioned in Sch. I, Art. 1, and is not a document within the meaning of this section. An application to review an appellate decree passed on a Letters Patent Appeal is liable to payment of Court-fee under Sch. I, Art. 5 of the Act.

10. APPLICATION OF S. 4.—SECTION 4 of the Court-Fees Act deals with the fees on documents coming before the High Courts in the exercise of their APPELLATE OR REVISIONAL JURISDICTION in cases coming from the Subordinate Courts, or in their EXTRA-ORDINARY ORIGINAL JURISDICTION. This section does not apply to the High Courts in the exercise of their Ordinary Original Civil Jurisdiction, Ordinary Original Criminal Jurisdiction, jurisdiction as regards appeals from its original side, and its jurisdiction in matrimonial, admiralty, and ecclesiastical causes. No Court-fee is necessary on appeals coming before the High Court for disposal, on a reference by the Government of India, under the Agency rules framed under Act XXIV of 1893. Prior to the passing of the Court-Fees Amending Act XIX of 1922, S. 4 of the Court-Fees Act did not include within its purview an appeal from the judgment of a single Judge of the High Court and no Court-fee was leviable on such a memorandum of appeal.

11. PROCEDURE IN CASE OF DIFFERENCE AS TO NECESSITY OR AMOUNT OF FEE.—[SECTION 5.] It is assumed that a High Court collecting fees will have some officer, or Court clerk, whose duty it is to see that the fees in any particular case are paid. S. 5 requires that if there is a DIFFERENCE OF OPINION between the officer whose duty it is to see that the proper fee is paid, and any suitor or attorney, as to the fee payable, there should be a REFERENCE TO THE TAXING OFFICER, who should then give a DECISION ON THE QUESTION RAISED. A difference arises within the meaning of the section as soon as the office reports that the stamp is insufficient. The reference to Taxing Officer may embrace questions as to necessity, or amount of fee payable on an appeal from an order of a Judge on the Original Side of the High Court, under the High Court's Charter. The Taxing Officer has jurisdiction to decide a question relating to valuation for the purpose of determining the amount of Court-fee payable by the appellant either on his plaint, or on his memorandum of appeal, under S. 5 of the Court-Fees Act, and the Taxing Officer is not bound by the valuation appearing on the memorandum of appeal where such valuation has been accepted in the lower Court either without question, or after contest. The decision of the Taxing Officer, or Taxing Judge, is not subject to an appeal to, or review by, the Court itself. In a case where there has been a reference to a Taxing Officer, or the Taxing Judge, the High Court would be precluded from hearing an objection as to deficiency, unless the Taxing Officer has given no decision on the reference, nor has he referred the case to a Taxing Judge for his opinion. The Taxing Judge must decide the question himself, and cannot refer it to a

Division Bench. The Taxing Officer is the Registrar of the High Court on its appellate side. The Master of the High Court is now the Taxing Officer in Madras.

CHAPTER III.

12. SECTION 6.—FEES ON DOCUMENTS FILED IN MUFASSAL COURTS OR IN PUBLIC OFFICES.—SECTION 6 is the charging section in Chapter III of the Court-Fees Act, and it declares that no plaint or memorandum of appeal shall be received unless in respect of it there be paid a fee of an amount not less than that indicated in Schs. I and II, as the proper fee for such document. This provision is similar to S. 4 of the Act, and contains a mandatory and prohibitory provision as regards Court-fee payable in respect of suits or appeals in the subordinate Courts. The procedure to be followed when a plaint or memorandum of appeal is filed in a Court other than a chartered High Court or a Presidency Small Cause Court is as follows—the Court will first of all decide into which of the various classes (or categories) enumerated in Schs. I and II, the document falls. The Court will then proceed to see whether the proper fee is a fixed fee under Sch. II, or an *ad valorem* fee under Sch. I. No question of valuation arises if the fee is a fixed fee; but if an *ad valorem* fee is leviable, then the Court will proceed to value the subject-matter, or the subject-matter in dispute, or fix the amount of the relief claimed according to rules for computation set out in Ss. 7 and 8 of the Act. By S. 19-K, this S. 6 has been made inapplicable to probate and letters of administration.

13. COMPUTATION OF FEES PAYABLE IN CERTAIN SUITS—S. 7.—SECTION 7 of the Court-Fees Act lays down the method of reaching the value of certain claims as a preliminary to finding the Court-fees payable in respect thereof. The test of ACTUAL OR MARKET-VALUE applies to suits of a certain nature falling within Cls. (1), (3), 5 (*d*) and 5 (*e*); and there is a STATUTORY PRESCRIBED VALUATION for suits falling within Cls. (2), 5 (*a*), (*b*) and (*c*), 6, 7, 8, 9, 10 and 11; and unprescribed valuation at PLAINTIFF'S OPTION in cases falling within Cl. (4) of the section. The general principles for the determination of valuation of suits for the purposes of Court-fees are that the allegations in the plaint are to be assumed true and regard must be had to the nature of the relief sought in substance without any consideration of the evidence in the case. The averments in the written statement of defendant are not considered for determining the Court-fees payable on a plaint. Where alternative reliefs are claimed, Court-fees must be paid only in respect of one relief which appears to be of higher value. The plea as to deficiency of Court-fee has to be raised by the defendant before the decision of the suit in the Court of first instance, and such plea cannot be raised for the first time in appeal.

14. SUITS FOR MONEY—S. 7, Cl. (i).—SECTION 7, Cl. (i) of the Court-Fees Act deals with *suits for money*,

or for ascertained sums due as damages or compensation, or arrears of maintenance, and of annuities, or of other sums payable periodically. The claim for money may be in addition to, or instead of, any other relief in the suit. A suit for the recovery of a specific sum of money does not assume the character of a suit for accounts merely because in the determination of the question in controversy, accounts may have to be examined. The Court-fees in a suit for money has to be paid *ad valorem*, under Art. 1, Sch. I, on the amount or value of the subject-matter in dispute, *viz.*, on the amount actually claimed in the suit. Where the defendant pleads a set-off in the written statement, the Court-fee payable on the claim for set-off should be the same as for a plaint in a suit. Where a bond is payable by instalments, Court-fee has to be paid on the aggregate amount of the instalments and interest claimed, and not on the amount of the bond, or the sum of all instalments due or to become due thereafter. A suit for possession and mesne profits is governed by this clause so far as mesne profits are claimed antecedent to the suit. Court-fee cannot be levied in respect of a claim for mesne profits *pendente lite*. And under S. 11 of the Act, a fee is payable upon future mesne profits after ascertainment. A suit for rent, involving no relief concerning possession, is an ordinary suit for money. A suit for future interest stands on the same footing as future mesne profits and does not fall under S. 7 of the Court-Fees Act. In a suit by a mortgagee, for the amount of principal and interest by sale of mortgaged property, the Court-fee should be paid on the whole claim inclusive of principal and interest. A suit for the recovery of money and various articles left in the custody of one of the defendants, for whom the other defendants became sureties, and alternatively, for the equivalent in value of the articles as damages, is a claim falling under Cl. (1) of S. 7 of the Act. In a suit for recovery of money due, after deducting a sum assessed as the amount of damages, suffered by the plaintiff on account of the breach of contracts, Court-fee is leviable according to the amount claimed. In a claim for money on account of arrears of maintenance, or annuities due, Court-fee has to be paid under S. 7, Cl. (i) of the Act. The provisions of S. 7 apply equally to appeals as to original suits. No Court-fee is payable on memorandum of cross-objections supporting the decree of the lower Court appealed against. Where a decree is payable in certain instalments, Court-fee on appeal is payable on the difference between the values of the reliefs claimed, and that granted by the decree.

15. **SUITS FOR MAINTENANCE AND ANNUITIES—S. 7 (ii).**—This clause is to be distinguished from the preceding Cl. (i) which provides for cases where the suit for money is in respect of *arrears* of maintenance, of annuities, or of other sums payable periodically, which is always a definite amount. Cl. (ii) would involve a determination of the right to receive in future the amount sued for, which obviously has to be indefinite in most cases. The Court-fee leviable is on ten times the amount claimed to be payable for one year next before the date for presenting the plaint. This class of suits is to be dis-

tinguished also from suits for declaration of right, with consequential relief, which fall under S. 7, Cl. (iv) (*c*) of the Act. The decree in suits falling under Cl. (ii) is not merely declaratory in form but is executable. A suit for enhancement of maintenance is strictly within this clause, but a suit for reduction of maintenance is in effect a suit for declaration, with or without consequential relief according to the frame of the suit. In a suit to recover a sum of money as annuity, the Court-fee payable under this clause is on ten times the amount claimed to be payable for a year, but market-value is considered for the purpose of probate fee to be paid under Sch. I, Cl. (ii) of the Act.

16. SUITS FOR MOVEABLE PROPERTY HAVING A MARKET-VALUE—S. 7 (iii).—The term moveable property is not defined in the Act, and so the definition in the General Clauses Act (X of 1897), S. 3 (25) will have to be taken as applicable. A suit to recover moveable property, other than money, "where the subject-matter has a market-value," falls under this clause, and has to be valued for purposes of Court-fee "according to such value at the date of presenting the plaint." Any subsequent increase or decrease in the market-value is, therefore, immaterial. A suit for the recovery of pledged property, and a suit for possession of the property belonging to a monastery, must be on a stamp under this clause. However, a suit under S. 92, Civil Procedure Code, generally involves a question upon which no pecuniary value can be placed, and this clause is not applicable to suits not involving the value of any portion of the trust property; such suits would come within the purview of Art. 17, Cl. (6) of the Act. Moveable property includes documents. No hard and fast rule is possible in such cases but the amount recoverable on the document should be the criterion of their market-value. A document of title is a typical case of moveable property, but it has no assessable market-value, and provision has been made for it specifically in Cl. (iv) (*a*) of the Act, under which Court-fee has to be paid *ad valorem* according to the amount at which the relief sought is valued in the plaint.

17. SUITS FOR MOVEABLE PROPERTY OF NO MARKET-VALUE—S. 7 (iv) (a).—This paragraph deals with suits for recovery of moveable property having no market-value, as, for instance, in the case of documents relating to title. But a suit by a mortgagor to obtain possession of the mortgage-deed, on the ground that the amount of the deeds had not been paid, is not a suit for recovery of title-deed, and cannot fall under this clause. A suit for declaration of invalidity of a document, *e.g.*, for cancellation of an agreement to sell, or for cancellation of a decree, is not a suit falling under this clause. A suit of the nature comprised under S. 7 (iv) (*a*) is such that its market-value is impossible of determination, and hence the Legislature has, with strong reasons, left the fixing of the valuation to the plaintiff. By Madras Act V of 1922, a proviso relating to the valuation of immoveable property is added to Cl. (*c*) as the penultimate paragraph. A new paragraph S. 7 (iv-A), relating

to valuation of suits for cancellation of decree or document, is also added. The value for jurisdiction is the same as for Court-fees under S. 8, Suits Valuation Act.

18. **RIGHT TO SHARE IN JOINT FAMILY PROPERTY —S. 7 (iv) (b).**—SECTION 7 (iv) (*b*) of the Court-Fees Act applies to a case where the plaintiff sues to enforce his right to a share in any *joint family property*, and the valuation is according to the amount at which the relief sought is valued in the plaint or memorandum of appeal. This clause does not apply to a suit by a Muhammadan co-sharer for partition and possession of deceased father's properties. There is a great divergence of views amongst the different High Courts as to the class of suits to which this clause applies, and more particularly as to the method of valuation for purposes of Court-fee, and jurisdiction, when plaintiff alleges or is found in possession of property claimed to be joint family property. In a suit for partition where plaintiff sought something more than a mere change in the mode of enjoyment of the property, and the suit was for a declaration of right coupled with a decree for possession, by enforcement of the right to share in property on the ground that it is joint family property, the suit comes under S. 7 (iv) (*b*) of the Court-Fees Act, and the amount of Court-fee payable is to be computed according to the amount at which the relief sought is valued in the plaint. A typical case falling under this clause is where plaintiff coparcener, out of possession, sues for joint possession or enjoyment of the family property based on the theory of Hindu law. It may be noted that where in a suit for partition the defendant is merely asking for his share, no Court-fee is necessary to enable the Court to order the defendant's share also to be separated. A suit for partition, falling within the sub-cl. (iv) (*b*) of S. 7 of the Act, has the same value for jurisdictional purposes as for Court-fee.

19. **DECLARATORY DECREE AND CONSEQUENTIAL RELIEF—S. 7 (iv) (c).**—This sub-clause enacts that in suits which are not for a mere declaration, but involve some consequential relief with the declaration sought, as an additional or ancillary remedy thereto, the plaintiff has the right to value the relief sought, in the plaint or memorandum of appeal, for purposes of Court-fee payable under the Act. But it is a common fashion to attempt an evasion of Court-fee by casting the prayers of the plaint into a declaratory shape, and it depends on the facts of each case whether it is incumbent on the plaintiff to seek for a consequential relief, and whether in fact, or in essence, such relief has been asked for, for the case to fall under this sub-clause providing for *ad valorem* Court-fees. THE MADRAS AMENDMENT (Act V of 1922) provides to the effect that where the relief sought is with reference to any immovable property, such valuation shall not be less than half the value of the immovable property calculated as in manner provided in para. 5 containing provisions analogous to Arts. 2 and 4, Sch. I. This proviso curtails the privilege given to the plaintiff in cases falling under S. 7

(iv) (*c*) by enacting a minimum value for such suits, which involve the possession of immovable property.

20. **DECLARATORY SUITS**.—Suits for a declaration, pure and simple, not combined with any other consequential, or further relief, are provided for under Sch. II, Art. 17 (iii) with a fixed fee. But *ad valorem* fee is chargeable on suits for declaration with consequential relief falling under this sub-cl. (iv) (*c*) of S. 7 of the Court-Fees Act.

21. **CONSEQUENTIAL RELIEF**.—The expression "Consequential relief" means a substantial and immediate remedy in accordance with the title which the Court has been asked to declare. It means some relief which would follow directly from the declaration given, but which cannot be claimed independently of the declaration as a substantive relief. The expression would not apply to any auxiliary equitable relief which it is in the option of the plaintiff to claim or not, and which it is not necessary for him to seek with a view to obtain the full redress claimed. THE TEST to be applied where two reliefs, one main, and the other ancillary, are sought in the plaint, in order to determine whether the second relief is consequential upon the first is to see "supposing the first relief is not granted does it follow that the plaintiff cannot obtain the second relief," then the converse, "supposing the first relief is granted, does it follow that the second relief will be granted". A prayer for *ad interim injunction* is a substantial prayer which makes the relief a consequential one. The necessity for consequential relief is dependant on the facts of each case. It is also to be noted that the question, whether S. 7 (iv) (*c*) of the Act applies or not, must depend on the substance of the claim, and not on the mere words which a plaintiff may choose to introduce into his plaint with reference to it. Where a prayer for consequential relief is meaningless, as not arising on the pleadings, or is redundant, or is vague and indefinite, the suit is not one for declaration *with* the consequential relief. Conversely, where the consequential relief is the substantial relief, and the declaratory relief is blind, the consequential relief has to be taken separately. THE GENERAL RULE as to the scope and applicability of the clause is that the cause of action as stated in the plaint, and that alone, is to be looked at. The valuation of a suit is to be determined not upon the plea taken in the written statement, but upon the allegations made in the plaint. But it is the substance of the claim, and not the form given to it in plaint, that really matters. The safest course in these cases is to ascertain what the plaintiff actually asks for by his plaint, and not to speculate upon what may be the ulterior effect of his success. The provision as to declaratory suits requires great care and circumspection, as declaratory suits are too frequently brought with the improper object of defeating the stamp laws. Where the evasion of stamp duty is successful, it cannot be touched, but the device does not merit encouragement or favour.

22. **SUITS FALLING UNDER S. 7 (iv) (c)**.—(1) A suit, not merely for a declaration of liability on the part of the

defendant to account to him, but for an *injunction and accounts*, comes under this clause.

(2) An *ad interim injunction* prayer is substantial prayer which makes the relief a consequential one.

(3) An *administration suit* is a suit for an account and application of the debtor's estate for the satisfaction of the claims of all the creditors. Where plaintiffs prayed for a declaration of his right as purchaser of certain property inherited by defendant under a will, and for the administration of the unadministered portion of the estate of the testator, and for the appointment of a receiver, the suit was held to fall under S. 7 (iv) (*c*) of the Act. *Ad valorem* Court-fee, however, is not provided for specifically, in the case of creditors who seek to file claims, after the preliminary decree, in pursuance of the order of administration passed by a Court.

(4) A suit, for declaration of title as *adopted son*, and for possession is a suit that comes within S. 7 (iv) (*c*) of the Act. A suit to set aside an adoption and to recover property does not fall under Sch. II, Art. 17 (*v*). A suit may, however, be confined to the question of the validity or invalidity of the adoption, without involving any consequential relief, or relating to any property moveable or immoveable.

(5) A suit for a declaration that the plaintiff is the owner of an *annuity*, (Toda Giras Hak), and is as such entitled to recover it, comes within this clause.

(6) A suit for declaration of title and for an *appointment of receiver* to preserve the property from being wasted is for a relief under S. 7 (iv) (*c*).

(7) A suit for declaration of proprietary right to certain property *attached in execution* of a decree, and for the removal of attachment, is for a consequential relief, the value of which rests with the plaintiff. However, a suit brought to set aside, or to restore an attachment upon a house, in pursuance of the permission given by Court, is a suit to obtain or set aside a summary decision or order falling under Art. 17, Cl. (*i*), Sch. II of the Court-Fees Act.

(8) A *claim suit* to establish right to attached property by a plaintiff in possession of immoveable property, under O. 21, R. 63, Civil Procedure Code, falls under Art. 17 (*i*) of Sch. II bearing a fixed fee of Rs. 10, and is not within the class of cases requiring *ad valorem* Court-fees. The prayer for consequential relief by injunction restraining execution, or for release of property from attachment is to be treated as a surplusage, not of the real essence of the suit.

(9) A suit for a declaration that a certain purchase in the name of defendant was a *benami transaction*, and for an order that the defendants should execute a conveyance of the property to plaintiff, is for a declaratory decree with consequential relief.

(10) A suit under S. 104, *Bengal Tenancy Act*, for a declaration that the plaintiff is an occupancy raiyat, and for settling a fair and equitable rent for his holding, adds a consequential relief to the declaratory prayer, and Court-fees must be paid for *ad valorem*. Suits, under the provisions of S. 106, Bengal Tenancy Act, are purely declaratory, for which a fixed Court-fee of Rs. 10 is payable under Art. 7, Cl. (*iii*), Sch. II of the Act. The proviso to S. 111-A of the Bengal Tenancy Act provides for suits, for a declaration of right by any person who is dissatisfied with any entry in or omission from any record of rights, concerning a right of which he is in possession. But if he claims, in addition to the declaration, a consequential relief that the entry in the records as to his status as tenure-holders is a nullity, *ad valorem* Court-fee on the valuation of the plaintiffs is payable. A suit by third person under S. 149 (3) of the Bengal Tenancy Act is not a title suit.

(11) A suit to establish plaintiff's right as the heir of her deceased son, and *to set aside a certificate* under Act XXVII of 1860, is a suit for declaration of right with *consequential relief*.

(12) The cases arising for *cancellation of decrees* may be either cases where a decree is a nullity, so far as the plaintiff is concerned, or where it is *prima facie* binding on him, which it is absolutely necessary for him to get set aside to avoid its consequences. A decree may be avoided, wholly or in part. A bare declaration of invalidity would generally suffice when the plaintiff was neither a party to the proceedings resulting in the suit, nor duly represented therein, so as to be directly or indirectly affected by the decree. But where plaintiff cannot get full redress claimed, without avoiding a decree, the prayer for mere declaration without consequential relief will not be sufficient.

(13) Allied to the question of cancellation of decrees is the question of *cancellation of previous deeds*; and the important point here also is about the same, whether the deed sought to be cancelled, so as not to affect plaintiff's rights, title or interest was executed by some other party, who represents, or is deemed to represent the plaintiff; or, whether it was executed by plaintiff himself: and, in this connection, it has to be noticed, under the facts and circumstances of each case, whether the relief sought by plaintiff in connection with the cancellation of a document is absolutely necessary for the success of his other relief claimed in the plaint, or whether the document, etc., is an absolute nullity in law, which would enable the plaintiff to ignore it altogether, and make its cancellation or setting aside quite unnecessary for him. Where two reliefs, one by way of declaration of title, and the other apparently by way of cancellation of deed are asked, it may be that the two reliefs are as a matter of fact, but one relief, or one relief is a surplusage inasmuch as it is bound to follow on the granting of the other; the case falls under S. 7 (iv) (*c*) only if the two reliefs are separate and necessary for the granting of full relief to the plaintiff, and if plaintiff has, expressly, or by necessary implication claimed both these reliefs in his plaint.

(14) A prayer for *confirmation of possession* is a technical form of suit, which has been held to be maintainable as a consequential relief, to the prayer for declaration of title.

(15) An *injunction* is a consequential relief when it is coupled with a prayer for a declaration of title, but if the prayer is separately for injunction, Cl. (*iv*) (*d*) of S. 7 is applicable. S. 7, Cl. (*iv*) (*c*) implies that the plaintiff is at liberty to assign his own value to the relief he claims as regards the consequential relief of injunction. But, where property is in possession of the Collector, or is in *custodia legis*, the prayer for injunction may be redundant and a surplusage.

(16) Suits for declaration of title and recovery of possession of property as a consequential relief have to be distinguished from suits, for possession merely, falling under S. 7 (v) of the Court-Fees Act. But a suit framed as one for consequential relief may be in substance one for possession, in which the prayer for declaration is superfluous. S. 7 (iv) (*c*) will apply where declaration is a necessary, if not the main relief. A plaint in such a suit would require an *ad valorem* Court-fee, on the value fixed by the plaintiff, and not the value determined under rules, for revenue-paying estates.

(17) A suit, against plaintiff's alleged wife, and her mother, for a declaration that defendant 1 was his lawfully married wife, and also praying for restitution of conjugal rights, falls under S. 7 (iv) (*c*), and *ad valorem* fee has to be paid on the valuation of the relief fixed by plaintiff himself.

(18) A suit for declaration of title as occupancy tenant of a land, and also claiming ejectment of the defendants as *under-raiyats* holding under the plaintiff, and also for arrears of rent, was held to fall under S. 7 (iv) (*c*) of the Act.

(19) A partition suit, pure and simple, falls under Sch. II, Art. 17 (*iii*) of the Court-Fees Act. But, where the relief sought was to declare a previous *solehnama* and decree to be invalid, and to bring all properties into hotchpot, the prayer was held to constitute consequential relief, and *ad valorem* Court-fee was payable under S. 7 (iv) (*c*) of the Act.

(20) A suit for assessment of rent and for recovery of a specific sum of money as damages for use and occupation is in the nature of a suit to obtain a declaratory decree with consequential relief.

(21) *Suits relating to trust*, in which the plaintiff seeks for a declaration that he is the sole shebait of an idol, or entitled to exclusive management of certain *devasthan* property, and also for an injunction would fall within S. 7 (iv) (*c*), and the plaintiff-appellant has to value the relief sought for purposes of Court-fee. However, suits brought under S. 92, Civil Procedure Code, for removal of a *Mahant*, and for appointment of a new Mahant in his place, and for the trust property being made over to the new Mahant, would be governed by Art. 17 (*ii*) of Sch. II of the Act.

23. SUITS NOT FALLING UNDER S. 7 (iv)(c).—A suit for declaration, pure and simple, not combined with any other consequential relief, or further relief, will, of course, not come under this sub-clause, and is provided for under Sch. II, Art. 17 (*iii*), with a fixed fee for Rs. 10, which has been increased by some Amending Local Acts. The same result will follow where the consequential relief prayed for has been thrown in as a mere surplusage or is quite unnecessary. A suit for declaration by a plaintiff, not a party to the decree, that a certain decree is null and void, does not require an *ad valorem* Court-fee under S. 7 (iv) (*c*) of the Act. A suit for mere declaration of title to property under O. 21, R. 63, Civil Procedure Code, does not fall under S. 7 (iv) (*c*) of the Act. A vague and indefinite general prayer for "any other relief," deemed suitable, does not convert a suit for mere declaration into one for a consequential relief, and S. 7 (iv) (*c*) will not apply. A suit for the cancellation of a deed, which may be treated as null and void against the plaintiff, who is no party to it, or who never intended to execute the same, does not really ask for any consequential relief. A suit under S. 77 of the Registration Act to direct registration of a will is not a suit falling within S. 7 (iv) (*c*) of the Act.

24. VALUATION OF SUITS UNDER S. 7 (iv) (c).—The valuation of suit for Court-fee is at option of plaintiff. The Court-fee is paid *ad valorem* on the amount at which the plaintiff values the relief sought by him. The value for purposes of Court-fee is to be determined first, and that for purposes of jurisdiction must follow on the same. Where the plaintiff does not value the relief for Court-fee, the value for jurisdiction may be adopted for Court-fee, unless the plaintiff amends the plaint, by valuing the relief for the purposes of Court-fee at a reduced amount. The value for purposes of Court-fee and jurisdiction is to be the same under S. 8 of the Suits Valuation Act. The reliefs for declaration, and consequential relief, may be valued as a whole, or independently. If consequential reliefs prayed for are more than one, each one of the consequential reliefs has to be valued separately, and the Court-fee payable is on the aggregate value of the consequential reliefs, and declaration, *viz.*, on the total valuation of the suit, as stated by the plaintiff. The Court-fee payable on the memorandum of appeal is the same as that paid on the plaint in the suit. In a suit to set aside a trust-deed, the defendant may have no personal interest at all, and yet the subject-matter of appeal may be as valuable as the subject-matter of the suit. The defendant in his appeal should not depart from such original valuation given by the plaintiff in his plaint, where the subject-matter continues to be identical. The Court-fee on appeal must be regulated by a consideration of the relief sought in appeal.

25. SUITS TO OBTAIN INJUNCTION—S. 7 (iv) (d).—This sub-clause is concerned only with mandatory or perpetual injunctions, when they are claimed as the only relief, or as an additional relief, separate from the other prayer in the suit. Where injunction is asked for, as a consequential relief to a

declaratory decree, the case would fall under S. 7, paragraph (iv) (*c*). *Applications*, under O. 39, R. 2, Civil Procedure Code, for a temporary injunction, are evidently not covered by S. 7 (iv) (*d*) of the Court-Fees Act. They are not *suits* to obtain an injunction. A temporary injunction may also be asked in a case as a consequential relief. In a suit for injunction, falling under sub-cl. (iv) (*d*) of S. 7 of the Act, the plaintiff has to value the claim, and Court-fee will be paid *ad valorem* on the amount stated in the plaint. Valuation for jurisdiction is to be the same as the valuation for Court-fee fixed by the plaintiff at his option, under S. 8, Suits Valuation Act. The valuation made in conformity with stamp law does not prevent a party from obtaining leave to appeal to Privy Council where the real value does not fall short of the appealable amount.

26. **SUITS FOR EASEMENTS—S. 7 (iv) (e).**—This sub-clause provides that in a suit for some right to benefit arising out of land, not provided for elsewhere in the Act, the Court-fee will be paid according to plaintiff's value of the real relief sought, *e.g.*, as regards easements. A suit to have a doorway closed is a suit relating to easement which would fall within S. 7 (iv) (*e*) of the Act. But a case of conflicting claims with regard to the waters of a flowing stream, where the plaintiff sued to establish certain rights in a stream, was held to fall under S. 7 (iv) (*c*) of the Act.

27. **SUITS FOR ACCOUNTS—S. 7 (iv) (f).**—This sub-clause deals with a special form of suit, the distinguishing feature of which seems to be the accountability of one party to the other. A suit does not necessarily become a suit for account because the plaint asks for an account in order to ascertain the correctness or otherwise of the amount claimed by the plaintiff.

28. **Suits for Account—Instances.**—A suit for administering the estate of a deceased person, and giving plaintiff his share; a suit for rendition of accounts of an alleged partnership; a suit for accounts against agent or Mukhdyar entrusted with the management of certain property; a suit for an account of a joint family business; a suit for partition of offerings at a shrine, and for accounts of the shrine to be taken and explained to plaintiffs; a suit for declaration and injunction or for an order to defendant to keep a correct account of the timber removed; a suit by a firm of cloth dealers against their commission agents for an account of all business done by the defendants on their behalf for a given period are suits for an account falling under S. 7 (iv) (*f*) of the Court-Fees Act.

29. **Suits for Account—What are not.**—Suits for a definite sum of money which the plaintiff alleges to be due to him from the defendant requires an *ad valorem* Court-fee under S. 7 (i) of the Act. A suit for the recovery of a specific sum of money does not assume the character of a suit for accounts, merely because in the determination of the question in controversy accounts may have to be examined. A suit for public charities

under S. 92 falls within the purview of Art. 17 (vi), Sch. II to the Court-Fees Act. A suit for removal of trustee and for accounts of any money held in trust is not one falling under this sub-clause. In a suit for partition of joint family property, the Karta or manager is not liable for any account, in the absence of fraud or misappropriation or other improper conduct with respect of management. A suit by a commission agent to recover the balance due on taking accounts is not a suit for accounts under S. 7 (iv) (*f*).

30. VALUATION FOR COURT-FEE.—UNDER S. 7 (iv) (*f*) of the Court-Fees Act, a plaintiff must, in a suit for accounts, state the amount at which he values the relief sought, but he generally gives a rough and ready approximation, and he is free to fix the valuation of the relief as he thinks proper, for purposes of Court-fee, subject to the provisions of S. 11, which precludes the execution of the decree in case it exceeds such value until the full fee on the account decreed has been paid. And, by S. 8 of the Suits Valuation Act, the value determinable for the computation of Court-fees and the value for purposes of jurisdiction shall be the same.

31. VALUATION FOR JURISDICTION—S. 7 (iv) (f).—The valuation made by plaintiff of the subject-matter in dispute is often arbitrary and tentative. A distinction has been made between the tentative and actual value of a suit, upon which depends the jurisdiction of a Court to entertain the suit, and to decree the claim. Where the value finally determined is within the limits of Court's pecuniary jurisdiction, no difficulty arises. the Court allows the plaintiff the larger amount than what is tentatively claimed, and the plaintiff pays the additional Court-fee payable under S. 11 of the Court-Fees Act. But the difficulty arises as to valuation of reliefs sought when the amount ascertained in the course of suit, on rendition of account is in excess of the pecuniary limits of Court's jurisdiction. Three different views prevail, one that the Court entertaining the claim can pass decree beyond its pecuniary limits on a rendition of accounts; second, that it cannot do so, but must limit its decree to amount within its pecuniary jurisdiction, and thirdly, that the plaint should be returned for presentation to Court of competent jurisdiction.

32. VALUATION IN APPEAL—S. 7 (iv) (f).—In a suit for account, the approximate value of the suit at the start may be changed to a real ascertained value, and the value of relief in appeal, and in the suit may not be co-extensive. An appeal from a preliminary decree filed by the plaintiff, whose claim is non-suited, is to be valued for the purposes of jurisdiction and Court-fee, at the value of the relief stated by the plaintiff. Where the subject-matter in appeal is co-extensive with that in the suit, and the defendant appeals, two opposite views prevail. The Madras Full Bench, followed by Bombay, Sindh, Lahore, etc., holds that the defendant is bound to adopt the plaintiff's valuation

for an appeal against preliminary decree. The Allahabad High Court, followed by Patna, etc., holds that the defendant is free to put his own valuation in appeal, and that plaintiff, for purposes of appeal, means the appellant, whether plaintiff or defendant. Where the subject-matter of appeal is not co-extensive, and the appeal is from a preliminary decree where subject-matter of appeal is different from that in the suit, the view of most of the High Courts is that the defendant is bound to pay Court-fee only against part of preliminary decree objected to, *viz.*, on the value of the subject-matter in appeal. The Privy Council view is that plaintiff-appellant is within his right in putting a reasonable value on his appeal, including prayer for dismissal of final decree passed in favour of the defendant. This ruling has been variously, and. almost irreconcilably, interpreted by different High Courts. In appeal from *final* decree, the amount being ascertained, the better view seems to be that the plaintiff or the defendant will have to value the subject-matter of the appeal both for purposes of Court-fee, and jurisdiction, at the amount of final decree. In suits for accounts, the determination of the forum of appeal, from the *preliminary* decree, depends upon the valuation of the suit for purposes of jurisdiction; and, the fact that the amount ultimately to be found may or may not exceed the valuation cannot disturb the course of appeal. But, where an amount in excess of the tentative value in the suit is awarded, the amount ascertained by the Court to be due to the plaintiff, and not the sum at which he values his claim approximately and tentatively, must be regarded as the value of the suit for the purpose of determining the FORUM OF APPEAL. If separate appeals are prepared against the preliminary and final decree, it is hard on the appellant to pay *ad valorem* Court-fee twice over. A combined appeal is allowed against the final decree, including the preliminary decree, subject to bar by limitation.

33. **SUITS FOR POSSESSION OF LAND, HOUSES. GARDENS—S. 7 (v).**—In S. 7, sub-cl. (v), the valuation of suits for possession of lands, houses, and gardens, etc., is provided for on statutory basis of mode of calculation for the purposes of Court-fee. The word "*suit*" includes appeals, and the word "*possession*" means possession of any kind, proprietary or under-proprietary, as full owner, or under a limited or derivative title, and, the expression is not restricted to beneficial ownership. The fee is calculated on the *value of the subject-matter*, as distinguished from the "value of the relief sought," as in the preceding clause; and, instead of an *ad valorem* Court-fee on the valuation put by plaintiff, this clause requires Court-fees at statutory rates or the market-value as provided in different sub-clauses of this section.

34. **SUIT FOR POSSESSION AS PRINCIPAL, ADDITIONAL OR ALTERNATIVE RELIEF—S. 7 (v).**—The mode of valuation, in this paragraph, is applicable only when the suit is for possession of land, houses, or garden. A *suit for possession* is to be distinguished from suits for declaration of title, and recovery of possession as a consequential relief, or a suit for set-

ting aside a document and for recovery of possession of property as ancillary relief. Where the essential relief sought in a suit is recovery of possession, the valuation of the property for purposes of Court-fee is to be assessed under S. 7 (v) of the Act; although a prayer for declaration is added consequential to the success of the plaintiff in their substantial claim in the suit. In a suit for possession *simpliciter*, where the relief as to possession of land, etc., is the sole or the main relief in the case, Court-fee need be paid only on the actual relief valued under S. 7 (v) of the Act. Possession may be claimed as an *additional separate relief*, and in that case also the suit will have to be valued as regards the prayer for possession under S. 7 (v). Where possession is claimed as an *alternative relief*, it has to be valued under this paragraph, but the greater relief, requiring a higher Court-fee, will include the lesser relief.

35. **LANDS**.—In the Court-Fees Act, the word *land* seems to be used in a restricted sense, in contradistinction to houses or gardens. In the Punjab, bearing in mind the definition of land in the Punjab Tenancy Act, XVI of 1887, S. 4, Cl. (1), the purpose for which land is used is the essential determining factor. A *land suit*, as defined in the Punjab Courts Act, means a suit relating to land as defined in S. 4, Cl. (i), Punjab Tenancy Act. In this Cl. (v) of S. 7, Court-Fees Act, there are four sub-clauses, dealing with four different classes of lands, according to nature of the holding, and the revenue assessment. Under Cl. (*a*), the *land in suit* must be separately assessed, or form an entire estate or definite share of a permanently settled estate. In a similar case, of temporarily settled estates, or estates paying a fluctuating revenue, sub-cl. (*b*) will apply. Sub-cl. (*c*) deals with estates which have been partially exempted from revenue payment, or are charged with any fixed payment in lieu of such revenue. Sub-cl. (*d*) provides for lands forming part of revenue-paying estates, which are neither a definite share of such estate nor are separately assessed as above mentioned.

The construction of S. 7, Cl. (v) (*a*) to (*d*) of the Court-Fees Act has presented considerable difficulties. But, the principle of these rules seems to be this. Where the revenue is separately assessed, and the suit is in respect of a fractional part the fee may be paid on five times the land-revenue assessed on that part. But, where the suit is not for a fractional part, but for distinct plots, the fee must be paid on the market-value. Under Cl. (*c*), 15 times net profits of one year previous shall be deemed to be the value of the subject-matter.

36. **VALUATION FOR COURT-FEE IN SUITS FOR LAND**.—The valuation (or value) referred to in Cls. (*a*), (*b*) and (*c*) of S. 7 (v) of the Act is a value prescribed by statute, but the value referred to in sub-cls. (*d*) and (*e*) of the same clause is the market-value as representing its real value.

37. **VALUATION FOR JURISDICTION**.—The valuation for Court-fee, in a suit for possession under this paragraph,

is not necessarily the valuation for jurisdiction. Rules may be framed by the Local Governments for determining the valuation of land for purposes of jurisdiction (S. 3 of Suits Valuation Act), and such valuation will govern Court-fees (S. 6, Suits Valuation Act, and proviso to Cl. (*d*), Madras).

38. **VALUATION IN APPEALS**.—The value of an appeal, in a suit for possession, is not in all cases the value of the suit as originally filed, but the value of the relief granted by the decree which a party wishes to get rid of. Where the subject-matter of appeal is land, the method of valuation to be adopted in appeal is one adopted in S. 7 (v), Cls. (*a*) and (*b*). Where a plaintiff obtains a decree for recovery of possession, on payment of a sum of money, and on appeal contests the amount directed to be paid, the subject-matter of the dispute in appeal would be the difference between the amount admitted due, and the amount declared to be due. Where in a suit for possession, a relief for declaratory decree alone is asked in appeal, a Court-fee of Rs. 10 is sufficient.

39. **SUITS FALLING UNDER S. 7, Cl. (v)**.—Suit for possession of religious land; suit to set aside decree and sale in execution; suit by a reversioner on the death of a widow to recover possession of immovable property of her husband from her donee; suit for recovery of possession of a ghatwali estate; suit to eject a tenant at fixed rates; suit by landlord with a complete title for the ejectment of a tenant for breach of the covenant; a suit for possession of land, by reversioners, after the death of the alienor; a suit, by mortgagee, for possession by foreclosure of a mortgage by conditional sale, under Regulation XVII of 1806; a suit for redemption of a mortgage; a suit for separate possession by partition of joint family property; a suit for specific performance of a contract of sale and to deliver possession of the property; a suit by grantee of mine for possession against landlord and a third party; a suit for possession of *milkiyat* land, and in addition praying for recovery of certain plots of khudkasht land; a suit for partition by co-owners of property; a suit for possession of land by setting aside its sale; a suit for possession and past mesne profits; a suit for possession of an under-proprietary tenure; a suit for possession of immovable property on the basis of a *mukarari* lease; a suit by a lessee to obtain possession of land comprised in his lease; a suit by tenant, for recovery of possession of land, against the admitted landlord, and persons who also claim to be tenants; a suit for ejectment of defendant from Mahantship to which certain villages are attached; a suit for pre-emption; a suit for partition of a talūqdari estate; a suit for possession of part of estate by subordinate tenure-holder have all been held to fall under S. 7 (v) of the Act, and to be governed by one or other of its sub-clauses, according to the nature of land, and the nature of settlement assessment.

40. **HOUSES**.—Section 7 (v) (*e*) provides for the valuation of a suit for possession of a house or garden, "accord-

ing to the market-value of the house or garden," which is the subject-matter of the suit

All the amenities which are necessary for the beneficial enjoyment of a house can be spoken of as being part of the house itself. A house thus includes the whole site and the compound which surrounds the house with various outbuildings. In a suit for recovery of certain land after removing the building, illegally erected thereon, by the defendant, the value of the land alone has to be taken into account, and not the value of the building. But, where the suit is for recovery of the site, with the buildings standing thereon, then the structures on the site have to be necessarily valued for the purposes of Court-fee.

41. GARDENS.—The word "garden" used in the clause, in juxtaposition with the word "house," indicates that it means primarily an ornamental, or pleasure, or vegetable garden. Assessment is not the criterion in determining the question whether a land is garden or not. The growing of cocoanut trees on a portion of the assessed arable lands amounts merely to raising of a different crop, instead of the ordinary crops, which does not affect the application of S. 7 (v) (*b*) of the Act; and, consequently, the piece of ground on which cocoanut trees have grown is not a "garden" within the meaning of S. 7 (v) (*e*) of the Act.

42. VALUATION OF SUITS FOR COURT-FEE—S. 7 (v) (e).— Under this Sub-cl. (v) (*e*) of S. 7 of the Court-Fees Act, a suit for possession of a house or garden is to be valued for purposes of the Court-fee "according to the market-value of the house or garden." Where the subject-matter of a suit for possession is a house, Court-fee is to be paid *ad valorem* on the market-value thereof, and not on the rent of it. The expression "market-value" means the value at the time of suit. A suit to recover possession of land from a tenant is valued according to one year's rental, and not on the market-value of the house. A suit to eject a licensee, falling under S. 7 (v) of the Act, is valued for purposes of Court-fee at the value of defendant's right to remain in the house under the license. In a suit for the setting aside of a lease, or for possession of land after demolition of buildings erected on the land, the value of the buildings sought to be demolished is not taken into account in estimating the value of the suit.

43. VALUATION OF SUITS FOR JURISDICTION—S. 7 (v) (e).—Suits referred to in S. 7 (v) (*e*) of the Court-Fees Act are excluded from S. 8 of the Suits Valuation Act; and S. 3 of the Act only gives power to make rules for determining the value of "land". Accordingly, the valuation of houses is a *causus omissus* from the Suits Valuation Act, and under general principles of the Suits Valuation Act, the value for Court-fees is to be the value for jurisdiction.

44. VALUATION IN APPEAL—S. 7 (v) (e).—The value for purposes of appeal, of a suit for possession of a house, is

the market-value of the house as ascertained by the Court, and not the value as stated by the plaintiff in his plaint.

45. PRE-EMPTION SUITS—S. 7 (vi).—In a suit for pre-emption, where the subject-matter of the sale is land paying revenue, the fee payable is to be calculated under S. 7 (v) of the Court-Fees Act. Thus Court-fee is payable on five times the Government revenue where the subject-matter of the suit is (*a*) an entire estate or definite share of an estate paying revenue to Government; or (*b*) part of an estate recorded as separately assessed; or (*c*) a fractional part of a part recorded as separately assessed by virtue of the Notification No. 4650, dated the 10th of September, 1889. In all other cases the fee is payable on the market-value. Under S. 7 (v) (*c*), where land is exempt from revenue, the Court-fee is to be paid on an amount representing 15 times nett profits for the year next before the institution of the suit.

46. SALE OF EQUITY OF REDEMPTION.—Where the land sought to be pre-empted is subject to a mortgage, the Court-fee cannot but be assessed according to the provisions of S. 7 (vi) of the Act, upon the value of the property computed in accordance with S. 7 (v). Thus, in a suit for pre-emption on sale of equity of redemption, the Court-fee must be paid on the market-value of the property mortgaged and not on the value of such equity of redemption alone.

47. MARKET-VALUE.—The market-value which has to be taken is the value at the time of the sale, and not the market-value at the time of the suit, except when the property is improved by the purchaser subsequent to his purchase, in which case the value of the improvements is also to be taken into account.

48. HOUSES AND GARDENS.—In a suit for possession of land forming a garden though assessed to land-revenue, the value for Court-fee is governed by S. 7 (v) (*e*), Court-Fees Act, and is not arrived at either for Court-fee or in ascertaining jurisdiction by the artificial 30 times *Jama* rule. A claim for pre-emption of an indigo factory is similarly to be valued according to the value of the buildings constituting the factory, which is the real subject-matter of the suit, and which falls within the meaning of the term "houses" as used in the Court-Fees Act, although the site of the factory was land paying revenue to Government.

49. VALUATION FOR JURISDICTION.—The value of a suit for pre-emption for purposes of jurisdiction need not be the same as for Court-fees (*vide* S. 8, Suits Valuation Act). Under S. 3 of the Suits Valuation Act, the Local Government may make rules for determining the value of a suit for jurisdiction. In the Punjab, the value of a pre-emption suit for purposes of jurisdiction is 30 times the proportionate amount of revenue recorded as payable for the holding comprising the land in suit. As

regards houses, the value for Court-fees is also the value of the suit for jurisdictional purposes. In a pre-emption suit the jurisdiction of the Court is to be decided by the valuation set forth by the plaintiff in the plaint, and not by the price set out in the sale-deed upon which the suit for pre-emption is based. Where, however, the value of the property exceeds the sale price, the plaintiff cannot be required to value the claim beyond the consideration recited in the sale-deed.

50. **VALUATION IN APPEAL—S. 7 (vi).**—Where an appeal is preferred in a suit for pre-emption, on the ground that the right to pre-empt has or has not been established, as the case may be, no matter what other pleas may be taken, the value of the subject-matter in dispute, for the purposes of the Court-Fees Act, must be determined as in terms provided in Art. VI of S. 7 of the Act. But, when the question in appeal relates solely to the amount to be paid by the pre-emptor, then it should be calculated *ad valorem* on the difference between the amounts alleged as the sale-price on the one side and the other. The Punjab view is that the question of proper Court-fee leviable on the appeals must be decided with reference to the terms of Art. I, Sch. I of the Act, *viz.*, *ad valorem* on the amount or value of the subject-matter in dispute. Thus, in an appeal preferred by the pre-emptor to have the amount payable reduced by a certain sum, this sum represents the value of the subject-matter of his appeal; and, the subject-matter of the vendee's appeal is the land which according to his allegations has been wrongly decreed to the plaintiff. It is an anomaly of the law of Court-fees that a person who appeals only against a part of the decree should have to pay more Court-fee than the one who appeals against the whole of it. Therefore, it has been ruled that a litigant is entitled to appeal against the whole of the decree, though he obviously intends to attack only a part of it.

51. **SUIT FOR INTEREST OF ASSIGNEE OF LAND-REVENUE—S. 7 (vii).**—Where a person claiming to be entitled to the land-revenue as assignee from the Government brings a suit against any person who denies, or is interested in denying such right, the suit is to be valued under this clause as one for possession of revenue-free land, and Court-fee is payable as in S. 7 (v) (*c*) on 15 times his nett profits as such for the year next before the date of presenting the plaint.

Under S. 8 of the Suits Valuation Act, the value for jurisdiction is the same as for Court-fees.

52. **SUIT TO SET ASIDE AN ATTACHMENT—S. 7 (viii).**—This clause applies to suits to set aside an attachment (1) of lands, or (2) of an interest in land, or (3) of interest in revenue.

The suits contemplated in this clause are suits brought in pursuance of the permission given in the Civil Procedure Code to set aside or to restore an attachment upon *land*. This does not include a house.

53. **VALUATION FOR COURT-FEE**.—A person suing to set aside an attachment on land shall in no case be called upon to pay a higher fee than he would have to pay if he were suing for possession of land. A suit to set aside a sale in execution, on the ground that the attachment is not binding, is virtually a suit to set aside an attachment and the Court-fee should be paid on the value of the land or interest attached, if it is less than the value of the amount due to the creditor. A suit by trustees of an assignment of an insolvent trader for the benefit of his creditors is to be valued on the lien claimed by the judgment-creditor.

54. **SCHEDULE II, ART. 17 (i)**.—Where a suit is brought to set aside or restore an attachment upon a house, in pursuance of the permission given in the Civil Procedure Code, the suit is held to fall within Art. 17 (i), Sch. II of the Court-Fees Act, as a suit to obtain or set aside a summary decision or order; and a fixed fee of Rs. 10 is chargeable on a plaint or memorandum of appeal. Their Lordships of the Privy Council have also held that in a suit by an unsuccessful objector, for a declaration of his right to the property wrongly attached in execution of defendant's decree, and for an injunction to restrain the decree-holder from executing his decree against it, the objects and nature of the suit justify the application of Sch. II, Art. 17 (i) of the Act.

55. **VALUE FOR JURISDICTION**.—The value for jurisdiction, in such cases, is the same as for Court-fees, under S. 8, Suits Valuation Act. Where the value of the property in suit is higher than the amount of the decree, the valuation for jurisdiction is rightly limited to the amount of the decree, that being all that is recoverable in the event of the plaintiff being successful. But, where the decree is for an amount higher than the value of the property which the decree-holder seeks to have sold, then in this case the value of the property determines the jurisdiction. Where the judgment-debtor or his representative party is defendant to the suit, the property attached must be regarded as the subject-matter of the suit, whether its value exceeds or is less than the amount which is sought to be realised by the sale in execution.

56. **SUITS FOR REDEMPTION, FORECLOSURE OR CONDITIONAL SALE—S. 7 (ix)**.—This clause applies (1) to suits by a mortgagor, against a mortgagee, for redemption of mortgaged property; (2) to suits by the mortgagee, against the mortgagor, to foreclose the mortgage; and (3) to suits by a mortgagee to have a mortgage by conditional sale made absolute. But this clause does not apply to mortgages of moveable property, of the nature of pawns or pledges; or, to suits by a mortgagee to recover *money* on a mortgage.

A suit for recovery of possession of property mortgaged under a usufructuary mortgage also falls under Cl. (1). A suit for redemption of a *kanom* would also fall under S. 7 (ix), although a *kanom* mortgage in Malabar is not purely a mortgage, but may in part be a lease also.

Clause (2) of this paragraph applies to suits for foreclosure, *viz.*, suits to obtain an order that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property.

Clause (3) of this paragraph concerns suits on basis of a mortgage by conditional sale, as defined in S. 58 (*c*) of the Transfer of Property Act.

57. **SCHEME OF VALUATION IN SUITS FOR REDEMPTION—PRINCIPAL AMOUNT.**—The scheme of valuation of suits for redemption is according to the principal money expressed to be secured by the instrument of mortgage. In one case, the amount remaining due on the mortgage may be in excess of the principal amount by reason of the accruing interest; and in the other case, less than the principal sum secured by the mortgage, on account of repayment. In a suit for redemption, it is immaterial whether the mortgage debt is alleged to have been wholly satisfied by payment, or whether the mortgagee alleges a large amount to be due. The Court-fee in either case is payable on the principal sum secured by the mortgage-deed. This is equally the case even if the mortgagor claims surplus profits to be due to him from the usufructuary mortgagee.

58. A KANOM MORTGAGE means the transfer for a consideration in money, or in kind, or in both, by a landlord of an interest in specific immovable property to another (called *Kanomdar*) for the lafter's enjoyment. A *kanom* mortgage, in Malabar, is not purely a mortgage but it is also a lease. The language of S. 7 (ix) of the Act is precise, and it does not calculate arrears of interest, if any, nor does it calculate any improvements. Consequently, the institution fee, in a suit for redemption, must be computed on the *kanom* debt as it stood originally, and not on so much of it as was actually due at the date of suit after setting off against it arrears of rent. In every *kanom* document there are two distinct contracts by the tenant, *viz.*, (1) to surrender the property to the landlord after a stated period, and (2) to pay a stipulated rent to the landlord annually. The landlord is thus at liberty to seek a relief on either or both of these stipulations. Where a relief in respect of rent is sought independently of the claim for redemption, the former is treated as a separate money claim. Where arrears of rent, not intended to be set off against the mortgage-debt, are claimed in a suit for redemption, separate Court-fee is payable on each of the reliefs under S. 17 of the Act.

59. **TITLE IN DISPUTE.**—Where in a suit for redemption wider issues of title and adverse possession are raised by the pleadings, the reference to title in dispute does not make it obligatory on the plaintiff to pay an additional Court-fee.

60. **REDEMPTION OF PART OF MORTGAGED PROPERTY.**—In cases where it is competent to the mortgagor to sue to recover a portion of the mortgaged property, the debt must be regarded as distributed over the whole property, and the

proportionate amount of debt will be taken to be "the principal money expressed to be secured" by the mortgage-deed.

61. REDEMPTION BY A CO-MORTGAGOR.—Where a co-mortgagor who is entitled to redeem a share of the mortgaged property sues for redemption, the Court-fee payable is to be calculated on the amount of the mortgage-debt which is chargeable on the share which the plaintiff is entitled to redeem.

62. VALUATION FOR JURISDICTION.—Under S. 8 of the Suits Valuation Act, a suit for redemption or foreclosure need not bear the same value for jurisdiction as for Court-fee. But on general principles some High Courts held that the valuation for jurisdiction in suits for redemption is the same as the value for Court-fee. In Allahabad, Madras and Nagpur the amount of the principal debt is held to be the value of the subject-matter for purposes of jurisdiction. But, in Bombay, the value for jurisdiction is taken to be the amount actually due under the mortgage. The Calcutta and Punjab view is that the amount found due under the decree is the basis of valuation for purposes of jurisdiction: while the Rangoon High Court takes the value of mortgaged property to be the jurisdictional value.

63. VALUATION IN APPEALS.—There is a conflict of view on the question whether paragraph (ix) of S. 7, Court-Fees Act, is confined to suits only, or applies to appeals as well. The following results may be tabulated on a consideration of the different views prevailing in the various High Courts:—

(1) An appeal, by plaintiff, against dismissal of suit for redemption, relates to the right to redeem, and Court-fee is payable on the principal amount secured by the instrument.

(2) An appeal, by plaintiff, relating *only* to the amount decreed payable on redemption, and praying for its reduction, is to be valued under Art. 1, Sch. I on the deficiency claimed.

(3) An appeal, by defendant, relating to the right to redeem or foreclose, involves no change in the nature of suit, and Court-fee is payable, as in suit, on the principal amount secured by the instrument of mortgage.

(4) An appeal, by defendant, relating only to the amount decreed payable on redemption and wanting its increase, is to be valued under Art. 1, Sch. II, on the value of subject-matter in appeal.

(5) When the appeal, by plaintiff or defendant, relates to the right to redeem, and to the amount for redemption, the Court-fee is payable under S. 7 (ix) on the principal amount secured by the instrument of mortgage.

(6) Where the appeal in a redemption suit relates only to an item in the accounts, Court-fee on the memorandum of appeal need only be paid on the amount in question, as if the whole suit was to recover that amount.

(7) In a suit for sale on the basis of a mortgage, where a decree is passed declaring the separate liabilities of the different properties, and a defendant appeals, the Court-fee is to be calculated on the specific sum of money for which the appellant's property has been held liable.

64. APPEALS AGAINST PRELIMINARY AND FINAL DECREES.—(1) Where the defendant appeals against a preliminary decree holding that the plaintiff had the right to redeem, and directing the accounts to be taken, and the trial Court in the meantime passes a final decree for a certain sum found due, the defendant's appeal from final decree should be consolidated and considered as one.

(2) Where the plaintiff obtained a preliminary decree in a mortgage suit followed later by a final decree requiring the plaintiff to pay a certain sum, the plaintiff appealing against the preliminary decree on a Court-fee of Rs. 10, has to pay Court-fee on appeal against the final decree.

(3) An appeal against a final decree passed in a foreclosure suit has to be stamped *ad valorem* as an appeal from the *decree*.

(4) Where in a suit for redemption a preliminary decree was first passed fixing the amount payable, followed by a final decree, and separate appeals against the preliminary decree as also from the final decree are preferred, and an *ad valorem* Court-fee has been paid on the appeal from the preliminary decree on the amount of reduction claimed by the appellant, Court-fee stamp of Rs. 2 only is sufficient on the appeal from the final decree.

65. SEVERAL MORTGAGES.—Where there are two mortgages upon the same property in favour of the same person, and one of the mortgages is declared to be genüine, the subject-matter for the purpose of determining Court-fee payable on any appeal against the decree is the value of the mortgage found to be genuine by the Court of appeal. If there are different mortgages in favour of one and the same person, *in respect of same property*, the mortgagor cannot seek to redeem use of them without redeeming the others. But not so if they are different properties. If in a suit for sale on a mortgage, the defendants are impleaded as subsequent mortgagees, and held to be sub-mortgagees, and they appeal claiming to be prior mortgagees, Court-fee is payable under this paragraph, and not a fixed fee as on a prayer for declaration.

66. FORECLOSURE SUITS.—A suit for foreclosure of a mortgage should bear *ad valorem* Court-fee on the principal sum secured by the mortgage bond sued on.

67. FORECLOSURE APPEALS.—THE NAGPUR VIEW is that in a claim for foreclosure where there is no dispute as to the price of redemption, and the dispute is confined entirely to the right to foreclose *the whole or a portion of the property*, the value of a suit or an appeal for Court-fee purposes is the principal sum secured by the mortgage. Where the right to foreclose is the *sole* matter in controversy, the subject-

matter of appeal must no doubt be valued on the amount of principal mortgage-debt, but the qualification introduced by the view taken in Allahabad and Patna High Courts is that the fee is payable on the amount found actually due by one party to the other. Where an appeal is preferred from a decree in a foreclosure suit to the effect that the amount to be paid to the mortgagee should be reduced by a certain amount, or where the mortgagee decree-holder seeks to enhance the amount decreed as payable to him by the trial Court, Court-fee is *ad valorem* on the subject-matter of appeal under Art. 1, Sch. I, of the Act. The Oudh Court's view is that S. 7 (ix) is applicable only where the question raised by the plaint or memorandum of appeal is the right to foreclose apart from such a right for an adjudged sum. But that if the appeal challenges merely the amount to be paid or received, without questioning the right to foreclose, the Court-fee payable on appeal will be according to Art. 1, Sch. I on the value of the subject-matter in dispute. The Allahabad High Court does not apply S. 7 (ix) of the Act to appeals.

68. **SUITS ON MORTGAGE BY CONDITIONAL SALE.**—Under S. 7 (ix) where a person holding a mortgage by conditional sale applies to have the sale declared absolute, the fee is to be calculated in accordance with the principal amount secured by the instrument of mortgage.

69. **SUITS FOR SPECIFIC PERFORMANCE—S. 7 (x).**—This paragraph provides the mode of valuation, for purposes of Court-fees, of suits for specific performance (*i*) of a contract of sale, (*ii*) of a contract of mortgage, (*iii*) of a contract of lease, and (*iv*) of an award. This paragraph will be applied even though the suit is coupled with other reliefs consequential on the main prayer for specific performance.

A suit for the specific performance of a contract of exchange falls under S. 7 (*k*), Cl. (*a*) of the Act.

A suit claiming relief other than specific performance based on one of the four classes of action specified in this paragraph, and against persons not parties to, or liable under, the contract, is outside the scope of this paragraph; *e.g.*, suit by mortgagee for possession of land on ground of ouster by mortgagor; or suit based on a contract of guarantee; or a suit for possession by the lessee of land comprised in a lease.

70. **CONTRACT OF SALE—Relief by delivery of possession.**—A suit by plaintiff alleging a contract of sale, in which the prayer is that the defendants might be compelled to complete the sale to the plaintiffs, by the execution of a conveyance, and the registration of the sale-deed, and for possession of property has been held to be in substance one for specific performance of a contract of sale, falling under S. 7 (x).

71. **CONTRACT OF MORTGAGE.**—A suit would fall under S. 7 (x) (*b*) where a mortgagor or mortgagee has performed his part of the contract, and the other party is in default in the

performance of his part of the contract, *e.g.*, where the loan is advanced, and the mortgage-deed is not executed, or *vice versa*.

72. CONTRACT OF LEASE—VALUATION FOR COURT-FEE AND JURISDICTION.—Where an agreement of lease, for the purpose of clearing certain jungle lands, was made under which a lease was to be granted to lessee after the land had been cleared, the suit falling under S. 7 (x) (*c*) of the Court-Fees Act, was to be valued according to the amount of the rent of land payable for the first year of the term in respect of which the lease was claimed; and, under S. 8 of the Suits Valuation Act, that would be the valuation for purposes of jurisdiction.

A suit by a lessee to obtain possession of the property comprised in his lease and of which possession has not been given is not governed by this clause, but falls within the purview of S. 7, Cl. (v) (*c*).

73. SUITS BETWEEN LANDLORDS AND TENANTS—S. 7 (xi).—The words "landlord and tenant" include ex-landlord and ex-tenant. This paragraph prescribes the Court-fee in certain specified classes of suits between landlord and tenant, *viz.*, Cls. (*a*), (*b*) and (*cc*) relating to suits by landlords against tenants; and Cls. (*c*), (*d*) and (*f*) relating to suits by tenants against landlords. A suit based on title to the property against persons not standing in the relation of landlord and tenant, for ejectment against certain defendants cannot be governed by para. 11 of S. 7 of the Act.

Suit by landlord against tenant and a stranger; a suit for declaration of occupancy rights; a suit for assessment of fair and equitable rent; a suit by landlord for declaration of *Kudiaram* rights; a suit by alleged tenant against landlord and third person do not fall strictly within the contemplation of S. 7 (x) of the Act.

74. VALUATION FOR COURT-FEE AND JURISDICTION.—In the case of suits falling under S. 7 (xi) of the Act, the value for purposes of jurisdiction shall be the same as for purposes of Court-fee, and accordingly, it must follow the same. Under the Court-Fees Act, as amended by Act VI of 1905, under Cl. (xi) (*cc*) of S. 7, suits between landlords and tenants for the recovery of immoveable property from the tenants have to be valued for the purpose of payment of Court-fees upon the rent payable for the year next before the date of presenting the plaint. Under S. 8 of the Suits Valuation Act the same must be taken to be the valuation for the purpose of jurisdiction.

75. SUITS FOR DELIVERY OF MUCHILIKAS—S. 7 (xi) (a).—This clause relates to a suit by a landlord against his tenant "for the delivery by the tenant of the counterpart of a lease." The counterpart of a lease is known as a *muchilika*, while the lease issued by the landlord to the tenant is called a *patta*.

76. SUITS BY LANDLORD FOR ENHANCEMENT OF RENT—S. 7 (xi) (b).—This paragraph applies to suits by a

landlord for the enhancement of the rent payable by a tenant, such suits are cognizable by Revenue Courts only, under provisions of S. 77 (3) (*a*) of the Punjab Tenancy Act, 1887.

77. **SUIT BY TENANT FOR THE DELIVERY BY LANDLORD OF A LEASE—S. 7 (xi) (c).**—This is provided by S. 55 of the Madras Estates Land Act, and is similar to the corresponding suits by landlord falling under paragraph (xi) (*a*).

78. **SUITS BY LANDLORD FOR THE RECOVERY OF IMMOVEABLE PROPERTY FROM A TENANT—S. 7 (xi) (cc).**—This clause was inserted by the Amending Act VI of 1905. Such suits, prior to the amendment, fell under S. 7 (v) of the Court-Fees Act, as being suits for possession of land, and were governed by S. 14 of the Madras Civil Courts Act (III of 1873).

79. **SUIT FOR ARREARS OF RENT AND POSSESSION —S. 7 (xi) (cc).**—Under S. 7 (xi) (cc) of the Court-Fees Act, one year's rent is the proper valuation of a suit for recovery of immoveable property from a tenant including a tenant holding over. The Court-fee payable has to be determined on the nature of allegations in the plaint, and not on the pleadings in the written statement of the defendant. Accordingly, even where there was a denial of plaintiff's title, in the written statement, a suit framed on the alleged relationship of landlord and tenant, for a relief falling under S. 7, Cl. (xi) (*cc*) should succeed or fail, according to the finding on this point, and the Court need not go into the question of title raised in defence.

80. **SUIT FOR RECOVERY OF PROPERTY FROM A TENANT.**—S. 7 (xi) (*cc*) applies to a *suit for recovery of immoveable property from a tenant.* It is open to the defendant to deny the relation of landlord and tenant set up by the plaintiff. If he succeeds the plaintiff will be unsuited, and cannot fall back on the alternative plea that defendant is a trespasser liable in damages for use and occupation.

81. **SUITS TO EJECT A TENANT.**—A suit for ejectment against a tenant comes under S. 7 (xi) (*cc*) of the Act, and is chargeable on one year's rent and not on the market-value of the house. An *application* under S. 27 of Act X of 1859 for the assistance of the Collector, in ejecting a *raiyat*, however, is not a *suit*, and requires a Court-fee of annas eight only. A suit to eject a *thikadar* after expiry of lease is a suit within this Cl. (xi) (*cc*) of the Act, which applies to cases where a person was a tenant before, but his tenancy has been determined since

82. **SUITS AGAINST TENANT HOLDING OVER.**—A tenant holding over is a technical expression used in S. 116, Transfer of Property Act. This section is supplemental to S. 111 (*a*), according to which a lease determines by efflux of time limited thereby. Where a "tenant-on-sufferance" remains in possession,

in spite of a written notice to quit having been served, the suit is an ordinary suit for possession against a trespasser, which has to be valued for Court-fee and jurisdiction under S. 7 (*d*) of the Act. Similarly the successors of the lessee who does not enter by a lawful demise or title are not tenants on sufferance, but trespassers, and S. 116, Transfer of Property Act, has no application.

83. SUITS AGAINST TENANT AT FIXED RATE.—Prior to the Amending Act VI of 1905, a suit to eject a tenant at a fixed rate was held to be a suit for possession of land within the meaning of S. 7 (v) of the Court-Fees Act, but the Amending Act provides expressly for cases in which a landlord seeks to recover possession from the tenant and the Court-fee payable has been greatly reduced. An occupancy tenant is also liable to eviction under this clause.

84. VALUATION OF SUIT TO EJECT A TENANT.—A suit by a person in possession of a portion of the building as well the site on which the building stands, to eject a person occupying another portion of the building, is either not capable of valuation at all, and would fall under Sch. II, Cl. 17 (vi); or if it can be valued, its value is to be determined under S. 7, Cl. (xi) (*cc*) at 12 times the monthly rent yielded, but its value cannot be the market-value of the land and the buildings thereon under S. 7 (v) of the Act.

85. SUIT TO CONTEST NOTICE OF EJECTMENT—S. 7 (xi) (d).—A suit to contest a notice of ejectment is provided for by S. 45, Punjab Tenancy Act. A suit by a person served with a notice of ejectment, against the landlord, to contest the notice, questioning the legality of the notice, or claiming the value of improvements effected by the tenant, requires to be valued for purposes of Court-fees at a year's rental.

86. SUITS TO RECOVER OCCUPANCY PROPERTY—S. 7 (xi) (e).—This clause applies to suits by a tenant for recovery of possession of immoveable property in which plaintiff has occupancy rights against his landlord. This is the converse of the case provided under Cl. (*cc*). A suit by a tenant against his landlord and a stranger (*viz.*, a licensee, or tenant of the landlord, or a trespasser) for recovery of occupancy rights, would not be covered by this paragraph. A suit for possession by an occupancy tenant against his landlord on the basis of illegal ejectment falls under S. 7 (xi) (*e*) of the Court-Fees Act only when there is no question of title to be gone into. But, when a question of title is involved, the case would fall under S. 7 (v) of the Act, and the Court-fee would be payable on the market-value.

87. SUITS FOR ABATEMENT OF RENT—S. 7 (xi) (f).—This class of suits are the converse of suits by landlord for enhancement of rent. Clause (*f*) deals with suits by tenants, where they can claim an abatement of rent, by the terms of a lease,

on the happening of a contingency, or where it is provided for by statute. The valuation of such suits is at a year's rental.

88. **FEE ON MEMORANDUM OF APPEAL AGAINST ORDER RELATING TO COMPENSATION—S. 8.**—Section 54, Land Acquisition Act of 1895 provides an appeal to the High Court from the award, or any part of the award of the Court in any proceedings under that Act. Section 8 of the Court-Fees Act deals with the fee payable on a memorandum of appeal, against an order relating to compensation, by persons claiming compensation, where the claimant claims more than the amount awarded by the lower Court. The section has no application where the Crown is the appellant. The disputes between co-sharers as to the extent of their right, and the apportionment of the compensation form no part of the award, and such disputes would be definitely beyond S. 8, Court-Fees Act. The special provision in S. 8 of the Act makes Art. 17 (iv) of Second Schedule inapplicable to appeals by claimant, under the Land Acquisition Act; and this Article of the schedule is not applicable to appeals by Crown. In an appeal by the Crown against the award, Court-fee payable is an *ad valorem* fee under Art. 1 of the First Schedule.

89. **APPEALS BY CO-SHARERS ON QUESTION OF TITLE OR APPORTIONMENT—ART. 1, SCH. I.**—A decision in a reference under S. 30 of the Land Acquisition Act is not an "award"; it is an appealable decree passed in civil proceedings determining civil rights of two sets of contending parties, to which S. 8, Court-Fees Act, is not applicable, and which is governed by Art. 1, Sch. I of the Act, under which the Court-fee is payable *ad valorem*. Where the District Judge rejects an application for apportionment, and the petitioner is referred to the Civil Court for filing a regular suit, the order in question is not a decree, and the Court-fee on the memorandum of appeal against such an order is not required to be paid *ad valorem*, under Art. 1, Sch. I of the Act, but a fixed Court-fee is chargeable under Sch. II, Art. 11 of the Act.

90. Where no compensation has been allowed by an award under Land Acquisition Act, Court-fee payable on memorandum of appeal is the *ad valorem* Court-fee on the amount claimed. An order as to the disposal of compensation money, on a reference under S. 18 of the Land Acquisition Act, is appealable as from an original decree, and requires an *ad valorem* Court-fee stamp.

91. **COURT-FEE ON THE STATUTORY ADDITION.**—An appeal is different from the claim put forward before the Collector, in so far that the extra amount of compensation money claimed by an appellant in an appeal, under the Land Acquisition Act, should under S. 8 of the Court-Fees Act include also the 15 per cent. statutory addition on the market-value, and that he should pay Court-fees on the total amount including the 15 per cent

92. POWER OF APPELLATE COURT.—An appellant, in a land acquisition appeal, may give up a portion of his claim, and confine his claim in appeal to any particular amount. An Appellate Court cannot pass a decree for a larger amount than that claimed in the memorandum of appeal, unless, before the judgment is pronounced, an amendment of the memorandum of appeal is allowed, and the additional Court-fee paid in.

93. POWER TO ASCERTAIN NETT PROFITS OR MARKET-VALUE—S. 9.—Ss. 9 and 10 of the Court-Fees Act indicate that the legislature foresaw that plaints in suits for possession, or pre-emption of lands, houses or gardens, may, and will, be received about which a doubt will arise, and regarding which inquiry may show that the whole of the Court-fee prescribed has not been paid. These sections provide machinery for ascertaining the value of land and houses, the subject-matter of a suit when the Court thinks that the value has been wrongly estimated to the detriment of the revenue.

The Court has power to revise plaintiff's estimate of market-value or net profits, in suits specified in S. 7, Cls. (v) and (vi) of the Court-Fees Act: and a local investigation is discretionary. Such investigations to be held under S. 9 may be by commission, and the Commissioner's report will be treated as part of evidence in the suit, and the Court will take further evidence if necessary. The Court is not bound to issue any commission, and the investigation may be undertaken by the Judge himself. The Court can proceed under S. 9 and assess the value by proceeding strictly according to law, in the manner provided in the section, and not in an arbitrary and illegal way. It is not in the power of the Court to call upon the plaintiff, or the appellant, to produce evidence to substantiate the value which he has assessed upon the property in question, and on his failure to prove that the Court-fee is what he the party alleges it to be, to dismiss the suit or appeal for non-prosecution.

94. SUIT, WHETHER INCLUDES APPEALS.—The Allahabad High Court holds that Ss. 9, 10 and 11 of the Court-Fees Act relate to suits, and do not relate to appeals. But the Punjab view, supported by Calcutta and Madras cases, is that "*suit*" includes appeals, and it would be competent to the first Appellate Court, as also, to the Court of second appeal, or further appeal, to call upon a party, whose fee was in defect in the subordinate Court, to make good such deficiency, within a reasonable time to be fixed by the Court in accordance with S. 10 (ii) of the Court-Fees Act, on penalty of having any decision in his favour in the lower Court set aside.

95. PROVISIONS OF CIVIL PROCEDURE CODE AND COURT-FEES ACT COMPARED.—Ss. 9, 10 and 11 of the Court-Fees Act are not in conflict with S. 28 of the Act; and Ss. 9, 10, 11 and 28 of the Court-Fees Act are not in conflict with O. 7, R. 11, Civil Procedure Code, 1908. S. 8 empowers the Court to issue a commission for the purposes therein mentioned; and

S. 10 enacts that if the Court finds on inquiry that a sufficient Court-fee has not been paid, it is bound to stay the suit and to fix the time within which the additional fee can be paid. If the fee is paid accordingly, the plaint is as valid as if it had been properly stamped in the first instance. If the fee is not so paid, the suit shall be dismissed, which is to be compared with rejection of plaints under O. 7, R. 11, Civil Procedure Code. The only Court which can pass the order dismissing the suit, under S. 10, Court-Fees Act, is the Court having jurisdiction. The provisions in S. 10 (ii) are mandatory, and the power conferred by this provision of law may be exercised at any time so long as the suit remains before the Court.

96. **SUITS FOR MESNE PROFITS OR ACCOUNTS—PROCEDURE WHEN AMOUNT DECREED EXCEEDS AMOUNT CLAIMED—S. 11.**—By Madras Act V of 1922, paragraph 2 of S. 11 has been replaced by two substituted paragraphs providing for the realisation of Court-fees on past and future mesne profits exceeding the claim in suit.

S. 11 applies to suits, for accounts, and suits for mesne profits pure and simple. It also applies to claims for other reliefs in which a prayer for accounts or mesne profits is also included. In such cases, the plaintiff should state *approximately* the amount claimed, and the valuation given is tentative, and the Court can pass decree for larger amount than the claim, and levy additional Court-fee. An administration suit falls under this section.

This section applies to suits for past mesne profits up to institution of suit; but there is some conflict where future mesne profits are claimed. There is no cause of action at the time of commencement of suit for *mesne* profits subsequently accruing, but the possession of property decreed with mesne profits means mesne profits up to the time of possession being delivered, and where a plaint asks for past as well as future mesne profits, and Court-fee is paid for past mesne profits only, S. 11 of the Court-Fees Act applies. The fee payable under paragraph 2 of S. 11 is not the fee upon an estimated amount stated in the petition, but upon excess of the amount actually found due by the enquiry over and above the amount upon which the fee has already been paid.

97. **CASES TO WHICH S. 11 IS INAPPLICABLE.**—This S. 11 does not apply to the case of an interest accruing upon a money-decree passed in a mortgage-suit; nor to assessment of additional Court-fee by reason of interest *pendente lite*. A claim for compensation for use and occupation of a house is within the section, but not a suit for damages based on fraud, nor a decree awarding compensation in a land acquisition case.

98. **CONSTRUCTION OF THE SECTION.**—The section is construed strictly in favour of the subject. The term *suit* is taken as analogous to distinct relief as to mesne profits or accounts in a suit combining different prayers or part. Similarly, the words "*suits for account*" mean such portion of the suit as claims the relief by way of accounts. The first part of the section contem-

plates stay of execution till the extra Court-fee payable is paid: the direction as to payment of such Court-fees within time is no part of decree. The final provision in para. 2 contemplates levy of extra Court-fee within time fixed or, in default, a dismissal of suit.

99. COURT-FEE IN SUITS FOR PAST MESNE PROFITS.—A plaintiff suing for past mesne profits may value his claim either definitely or approximately. Court-fee is to be paid *ad valorem* on the amount claimed. The procedure for collection of additional fee is provided in S. 11 (1) by stay of execution until the fee is paid. Where the final decree awards amount in excess of the claim, the plaintiff is called upon to pay Court-fee on the difference between the sum decreed and the amount claimed.

100. INQUIRY AS TO MESNE PROFITS.—An application for ascertainment of future mesne profits is not a plaint, and no Court-fee is leviable until the amount is ascertained. The Court when decreeing a suit for possession of immoveable property may direct an inquiry as to past or future mesne profits, to be followed by a final decree.

101. DECREE FOR FUTURE MESNE PROFITS.—In some High Courts, no Court-fee is held payable in respect of future mesne profits directed to be determined in execution. But the weight of authority is now in favour of the view that the excess Court-fee can be exacted on future mesne profits, but only after the amount has been ascertained.

An appeal against order about period of mesne profits does not require an *ad valorem* Court-fee on amount of profits, as Court-fee will be payable when mesne profits have been ascertained. However, an appeal from a final decree in respect of subsequent mesne profits is chargeable with *ad valorem* Court-fee, under Sch. I, Art. 1, Court-Fees Act.

102. DECREE FOR POSSESSION AND MESNE PROFITS.—Where the decree is for possession and mesne profits, the procedure indicated is a final decree for possession, capable of immediate execution, with a decree for past mesne profits, which may be final, or a preliminary decree directing inquiry. The decree as to future mesne profits is always a preliminary decree. A final decree will be passed in accordance with the result of such inquiry as may be directed in respect of past or future mesne profits. Such decree will not be executed until payment of additional Court-fee.

103. PENALTY FOR NON-PAYMENT OF ADDITIONAL COURT-FEE.—The first part of S. 11 is not intended to fix a time for payment of extra Court-fee in respect of future profits, but provides stay of execution till such payment is made. A direction as to payment of fee within a time fixed is not a part of the "decree", meaning the final decree in the suit. The dismissal of a suit is not a penalty for default under 1st paragraph, which deals

with a case where profits are settled by a decree. The 2nd paragraph deals only with a case where mesne profits are ascertained in execution of the decree, the two paragraphs being mutually exclusive. The Court-fee on appeal is payable on the amount definitely ascertained in execution.

104. DECREE BEYOND LIMITS OF PECUNIARY JURISDICTION.—There is a conflict of view between several High Courts as to the competency of Court, in suits falling under S. 11, Court-Fees Act, to pass a decree in excess of the limits of their pecuniary jurisdiction. One view is that the jurisdiction to hear, and make a decree in, a suit or appeal is determined by the plaintiff's valuation in his plaint and the Court can pass a decree for an amount in excess of the limits of its pecuniary jurisdiction. The second view is that a Court of restricted jurisdiction can only give a decree within the limits of its pecuniary jurisdiction. The third view draws a distinction between the jurisdiction to entertain and decree a claim: a preliminary decree passed by a Court competent to entertain suit is not void; though the final decree should only be passed by a Court competent to decree the claim, to whom the case is transferred. Such Court may have a trial *de novo*.

105. VALUATION FOR JURISDICTION.—In suits for account, or for mesne profits, which are not excluded by S. 8 of the Suits Valuation Act from the application of the rule, the value for Court-fees and jurisdiction shall be the same. The approximate amount stated in the plaint is to be taken as the value of the suit, both for purposes of Court-fee and jurisdiction. Mesne profits subsequent to suit cannot be taken into consideration; but, in a suit for possession of immoveable property and past mesne profits, the aggregate value of two reliefs is taken as the value of one entire suit. The appeal in such cases is to be valued at the same amount as in the original suit.

106. VALUATION OF SUITS IN APPEAL—FORM OF APPEAL.—According to the Calcutta, Allahabad and Bombay High Courts, the valuation of the suit, for purposes of appeal, is the value of the subject-matter in appeal, including the value of the immoveable property, and the mesne profits decreed or ascertained by the first Court. According to the Lahore High Court, the approximate value is not binding upon the parties for the purpose of determining the form of the suit as well as appeal, and this is regulated by the amount ascertained or decreed by the Court. The Madras and Patna view holds that the rule to be applied to suits, as well as appeals, is to take the amount or value of the subject-matter as fixed in the *plaint*, regardless of subsequent ascertainment of mesne profits on inquiry, or the amount decreed by a Court, with jurisdiction to entertain a suit, or appeal.

107. DECISION OF QUESTION AS TO VALUATION—Section 12.—S. 12 is evidently framed for fiscal purposes, calculated to protect and safeguard the interests of revenue. Cl. (1) of the section makes the decision of Court, on the question of valuation, final between the parties: but Cl. (2) enables the Court

of appeal, review or revision to correct any mistakes "to the detriment of revenue." The scheme of the section is to see that the revenue is not defrauded, and that the proper fee is paid to Government for the trial of the suit, which includes appeals.

108. **APPLICATION OF THE SECTION.**—This section has no application to the Original Side of High Court; and it deals with fees in Courts and public offices other than those referred to in Chapter II. The section is not applicable to a question as to category or class of suit, but applies to a question of valuation merely in a certain class. S. 12 does not give jurisdiction to a Court to exercise any powers, in connection with a decretal order, after the Court passing it has become *functus officio* by having disposed of the case. It is not applicable to question of jurisdiction of Court; nor is it applicable to cross-objections to an appeal, except in Madras.

109. **QUESTION AS TO VALUATION DISTINGUISHED FROM CATEGORY OF SUIT.**—Almost all High Courts are agreed that under S. 12 it is merely the decision of the Subordinate Courts as to *valuation* distinguished from the category of suit which is made *final* as between the parties to a suit.

110. **DECISION BY LOWER COURT, EXPRESS OR IMPLIED.**—The words in Cl. (1) of S. 12 "*shall be decided by the Court*" do not carry with them the meaning that a formal decision is necessary on a distinct question or issue relating to valuation being raised. When a Court receives a plaint, petition, or any other pleading, its act, through the Chief Ministerial Officer, amounts to an implied decision that the proper Court-fee has been paid. And, if a plaint or memorandum of appeal has been registered, with an insufficient Court-fee, the case may be dealt with under Cl. (2), by the Appellate Court, when the matter comes up before it.

111. **CONSTRUCTION OF STATUTE, STRICT.**—SECTION 12, being a fiscal enactment, of a penal nature, is strictly construed, and it is not applied to cover matters other than *valuation* of suit. Under S. 12, finality attaches to decision on question of *valuation* merely; and the decision of a Court on the question of its jurisdiction to entertain the suit is not intended to be final. Questions as to category or valuation for purposes of jurisdiction are not covered by S. 12 (i) of the Act. The scope of the section is made narrower still, by change in the Code of Civil Procedure, which makes orders rejecting plaints open to appeal as a "decree".

112. **REVISION.**—There is a conflict of view on the question whether an order of Subordinate Court demanding additional Court-fee under S. 12 (i) or an order rejecting plaint in consequence of non-compliance is open to revision, and if so, under what circumstances. The Allahabad High Court holds that the order directing payment of additional Court-fee is the decision of a "case", open to revision under S. 115, Civil

Procedure Code. The Bombay Full Bench holds that revision lies under S. 115, Civil Procedure Code, under circumstances similar to special powers of the High Court under its Letters Patent. The Calcutta view favours power of interference on revision, especially when the erroneous decision is as to class of suit, and unfavourable to plaintiff. The Madras view is not consistent. Revision lies according to one set of rulings, and does not lie according to others; while a modified view is taken by a third set of authorities allowing revision when decision is unfavourable to plaintiff. The Lahore and Rangoon High Courts are opposed to power of revision against such interlocutory order, where another remedy exists by way of appeal from order of rejection. The Nagpur Court favours powers of revision. The Patna view favours powers of revision in exceptional cases. Its latest tendency is against exercise of power of revision.

113. POWERS OF APPELLATE COURT.—It is now fully established that the valuation for Court-fee is final as between the parties only. The Appellate Court is not bound in fixing the Court-fee by the decision of the lower Court as to stamp on plaint. The conditions requisite for exercise of the power are as follows:—

(1) The case must be pending before the High Court;

(2) The decision, or tacit order, by lower Court, must be wrong, and "to the detriment of revenue";

(3) The procedure of giving requisite time, to make good the deficiency, must be followed;

(4) The Court should stay suit until the additional fee is paid; and shall dismiss the suit in default of payment.

114. OBJECTION IN APPEAL.—An appeal is not barred, when question is as to the particular nature of a suit, or as to the fundamental question of category. The plaintiff-appellant can raise the question of Court-fee in appeal against an order rejecting the plaint, or dismissing the suit. The defendant may also contest the sufficiency of plaintiff's Court-fee in trial Court, and the defendant as respondent to plaintiff's appeal may raise the preliminary objection that the Court-fee on the memorandum of appeal is insufficient. However, when an order passed has been accepted by the defendant in the trial Court, it cannot be re-opened by him on appeal.

115. DUTY OF APPELLATE COURT.—The Appellate Court might itself take the question of Court-fee in the interests of revenue, as it is the duty of High Court to see that the Court-fee is paid in the High Court, and in the Courts below; and it has inherent jurisdiction apart from S. 12 (2) to insist upon a party paying the proper Court-fees throughout the litigation, as a condition precedent to proceeding with the appeal. The appeal comes before the Court when it is registered, but no Court-fee can be recovered after the appeal is disposed of.

116. REFERENCE OR REVISION TO HIGH COURT.—Section 113, Civil Procedure Code, 1908, read with O. 46, R. 1,

provides for reference to High Court in a *suit* or an *appeal in a suit*; but generally the question of Court-fees is to be decided by the Court for itself.

117. REVIEW.—The "*finality*" of the order of the first Court does not bar the Court reviewing its own order, either on the application of plaintiff, or on its own motion.

118. SECOND APPEAL.—Section 12, Cl. (1) is not applicable to Original Side of the High Court, but the High Court is fully competent in Second Appeal to demand deficit Court-fee both on the plaint and on the memorandum of appeal in the lower Appellate Court. There must be a wrong decision by lower Court to enable the High Court to exercise this power. The decision passed, or inferred from the orders of the lower Court, must have been to the detriment of revenue. There is no power of Court to reduce Court-fee where the wrong decision is against the subject. However, the Court-fee cannot be demanded where the lower Court made no order, or where the plaintiff merely failed to carry out Court's direction as promised.

119. PROCEDURE AS TO ENFORCEMENT OF DEFICIENCY.—Section 10 (ii) provides the procedure as to enforcement of deficiency. The Appellate Court is bound to give a reasonable time to be fixed by the Court for payment, and can take action only on default of plaintiff. Both parties can be directed to pay the deficit Court-fee, but the section is not applicable to cross-objections by defendant-respondent.

120. COERCIVE MEASURE AND PENAL CONSEQUENCES OF DEFAULT.—The High Court can dismiss the appeal or stay execution of decree until additional Court-fee is paid. The party in default is not entitled to any advantages of his previous litigation.

121. REFUND OF FEES PAID ON MEMORANDUM OF APPEAL.—Section 13 provides for refund of fee paid on a memorandum of appeal (1) when a plaint is rejected and is ordered to be received on appeal, (2) when a memorandum of appeal is rejected and ordered to be received, and (3) when a plaint or memorandum of appeal is disposed of by the lower Court on a preliminary point and there is a remand order for a second decision by the trial Court. An order under S. 13 of the Court-Fees Act is of a mandatory nature, which makes it obligatory on an Appellate Court to grant a certificate under circumstances mentioned in the section.

122. APPLICATION OF THE SECTION.—Section 13 permits and directs the refund of Court-fee paid on memorandum of appeal, when the case is remanded under O. 41, R. 23, Civil Procedure Code, on *reversal* of the decision of Court of first instance on a preliminary point. A certificate of refund cannot be given in an appeal from a preliminary *decree*, and the section does not apply where a decree is set aside against some of the defend-

ants or respondents only. But, where the appeal is remanded in *part*, of the subject-matter of suit, a proportionate refund is allowed.

The word "*suit*" in S. 13 includes appeal. Accordingly, S. 13 applies to remand under O. 41, R. 23, Civil Procedure Code, in second appeal to the lower Appellate Court. The expression "lower Court" has similarly been given a wide meaning and for second appeal, the lower Appellate Court is the lower Court.

123. PRELIMINARY POINT—MEANING OF.—The expression "preliminary point" is not confined to such legal points only as may be pleaded in bar of suit, but comprehends all such points as may have prevented the Court from disposing of the case on the merits, whether such points are pure questions of law or pure questions of fact. It means some point either collateral to the merits which precluded their determination altogether, or some particular question which though relating to the merits, precludes their general determination, and avoids the necessity of the full hearing of the suit.

124. ILLUSTRATIVE CASES.—Thus a question of plaintiff's *locus standi* to sue, or bar by *res judicata*, or plea of limitation, or want of jurisdiction, or absence of cause of action, or inadmissibility of evidence, or no proof of publication of libel, or plaint requiring an amendment are questions of a preliminary character. Similarly, question of estoppel, or validity of award, or abatement of suit are points preliminary to a decision on other points. And the weight of authority is now in favour of the opinion that questions not collateral to the merits of a case, *e.g.*, as to the factum or the validity of a contract, or a title to maintenance, are all treated as preliminary points, as their reversal leads to a remand for disposal of the other issues in the case under O. 41, R. 23, Civil Procedure Code. Where the Court has adjudicated on *all* the issues, O. 41, R. 23 is inapplicable, as the decision of the lower Court is not solely on the preliminary point.

125. REMAND FOR RETRIAL OUTSIDE O. 41, R. 23, CIVIL PROCEDURE CODE.—A remand directing amendment of plaint is not on a preliminary point, but falls under the inherent jurisdiction of the Court under S. 151, Civil Procedure Code. The Appellate Court has general powers of remand under S. 151, Civil Procedure Code, under which remand is allowed even where the decision appealed against was not on a preliminary point, or where the order passed is not in strict conformity with O. 41, R. 23, Civil Procedure Code. This power under S. 151, Civil Procedure Code, is exercised only in very exceptional cases, when the ends of justice require this to be done. A refund of Court-fee, however, is not obligatory under S. 151, Civil Procedure Code.

126. REFUND WHEN NOT ALLOWED.—No refund is allowed where an appeal is dismissed for non-payment of deficit Court-fee, or because it is not maintainable. Where the suit has not been disposed of by the first Court, as in the case of a preli-

minary decree, a refund is not allowed. Similarly, where the remand is not on a preliminary point, or a suit is compromised, no refund can be made; nor, where the final decree in a partition suit was drawn up by mistake on a Court-fee stamp.

127. REFUND UNDER SPECIAL ACTS AND PROVISIONS.—A refund is allowable under Ss. 10, 14, 15 and 19-A to 19-K of the Court-Fees Act; and also under S. 151, Civil Procedure Code. An application for refund need not be in writing. An application for refund, under S. 151, is not exempt, except when it is made to a High Court.

The provisions of Madras Act, VII of 1892, S. 13; Presidency Small Cause Courts Act, XV of 1882, S. 73; the Punjab Courts Act, XVIII of 1884, S. 72 also enact refunds of Court-fee in certain cases. Also see Notification No. 4560, Part A, Cl. 3 and Standing Order No. 90 of the Board of Revenue, Madras, dated 1st August, 1873.

128. REFUND OF FEE ON APPLICATION FOR REVIEW—S. 14.—Sections 14 and 15 deal with refund of Court-fee stamps on review applications. Section 14 provides a measure of relief in cases where the application for review is presented *after* 90 days, but the delay is not due to the petitioner's laches. The Court has a discretionary power to excuse the delay and to direct a refund of the difference between the amount paid and that which would have been payable had the application been presented within 90 days. The next S. 15 deals with refund on the success of the petition for review, and a refund under that section is obligatory.

129. COURT-FEE ON REVIEW APPLICATIONS.—See Arts. 4 and 5, Sch. I of the Court-Fees Act. Concessional half-rate is to be paid only if the application for review of judgment is presented *before* the 90th day. This period cannot be extended, for Court-fees purposes, as under the Limitation Act, under Ss. 5 and 12 of the latter Act. The two Acts are not in *pari materia*, and the applicant is not entitled to a deduction of time spent in obtaining copies of the judgment, and cannot get an allowance if the last day for filing the application falls on a Sunday or holiday.

The proper Court-fee payable on an application for review of judgment is the fee leviable on the plaint or memorandum of appeal, and there is no distinction between the applications referring to the whole decree or only a portion of it. The application for review of an *order* is not covered by S. 14, which applies to judgments ending in a decree.

An application for review of judgment *in forma pauperis* is not liable to any Court-fee.

130. REFUND ON REVERSAL OR MODIFICATION OF DECISION ON GROUNDS OF MISTAKE—SECTION 15.—Section 15 authorises the refund of Court-fee on a review application, when it is admitted to a hearing, and as a result the

original judgment is "reversed or modified," on the ground of a "mistake in law or in fact." The refund of Court-fee is obligatory under this section. Where a review is allowed on the ground of discovery of fresh evidence, the section is inapplicable. The amount of refund is all but the amount payable on any other application under the Act.

131. **INHERENT POWER OF COURT—SECTION 151, CIVIL PROCEDURE CODE.**—The Court has inherent power to order a refund of Court-fee under S. 151, Civil Procedure Code, to meet the ends of justice, and to prevent an abuse of the process of Court. A refund of Court-fee under S. 15, Court-Fees Act, can be made even if the petition refers to S. 151, Civil Procedure Code, as the additional authority; and, similarly, a Court may direct a refund under S. 151, Civil Procedure Code, without reference to Court's powers under S. 15 of the Court-Fees Act. The Court can act under S. 151, Civil Procedure Code, where it was misled by the appellant practising a fraud on the Court.

132. **CONDITIONS TO BE FULFILLED.**—The conditions requisite for application of S. 15 are that there should be a petition for review; that it should be admitted to hearing; that the former decision is reversed or modified on ground of mistake in law or fact, and not due to production of fresh evidence.

133. **MULTIFARIOUS SUITS—SECTION 17.**—The object of S. 17 is to prevent loss to the revenue by the joinder of separate causes of action in one suit, whether the reliefs sought were alternative or cumulative.

Section 17 applies to suits and appeals from suits, and not to applications and appeals from orders passed on applications.

134. **ALTERNATIVE RELIEFS.**—In the case of alternative reliefs Court-fee need be paid only in respect of one relief which appears to be of higher value; or, where the value is identical, the relief which requires a higher Court-fee. According to some High Courts this section is applicable only to a case of cumulative reliefs sought by the plaintiff: but this section has been held applicable by other High Courts to alternative reliefs claimed with reference to more causes of action than one.

135. **DISTINCT SUBJECTS.**—The term "distinct subjects" is not defined, and its interpretation has caused considerable confusion. But the majority of High Courts take the expression as synonymous with distinct causes of action.

Thus suits on three separate Hundis; or pro-notes; or for three separate deposits; and suits on different mortgages from same mortgagor; or, for debt guaranteed by different guarantors; or, suits for alternate reliefs arising from different causes of action; or suits for several declarations, regarding separate alienations by a widow; or a suit for declaration that certain property is not liable to attachment and sale, and for a declaration that it was joint family property; or, suit by a landlord against a

number of tenants, or a suit by a number of tenants against a landlord, for declaration in respect of different holdings, or various decrees, fall under this section.

Again, suit for damages and injunction; for inheritance and as legatee; for possession and mesne profits; for partition and accounts; for redemption and for rent; for joint possession and partition; for specific performance and for possession are governed by this section.

136. CONSOLIDATION OF SUITS OR APPEALS.—Where matter for consideration in a number of appeals is the same, and parties are the same, the appeals may be consolidated into one appeal, but Court-fees must be paid separately for each according to the provisions of the Act. An Appellate Court has inherent power to consolidate appeals; however this power cannot be extended in a manner to conflict with the Court-Fees Act.

137. MAXIMUM LIMIT.—The maximum fee chargeable is, under Art. 1, Sch. I, Rs. 3,000 only. Proviso applies generally to any plaint or memorandum of appeal.

138. WRITTEN EXAMINATION OF COMPLAINANTS —SECTION 18.—Under Sch. II, Art. 1 (*b*) of the Act, a written complaint of a non-cognizable offence is liable to Court-fee of annas eight, and a written complaint of a cognizable offence, including wrongful confinement, or wrongful restraint, is not liable to Court-fee duty. Section 18 prescribes a fee of annas eight (enhanced to Re. 1 in some Provinces) on first and only examination of a complainant recorded under S. 200, Criminal Procedure Code; where is no written complaint presented, and the offence complained (though cognizable), falls under Ss. 341, 342, Indian Penal Code; or the offence complained of is a non-cognizable one.

139. EXEMPTION OF CERTAIN DOCUMENTS— SECTION 19.—Section 19 enumerates the various documents which are exempt from payment of Court-fee. Section 35, further reserves the rule-making power of the Imperial and Local Governments, under which other exemptions, or partial remissions, are notified.

140. PROBATE, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION—CHAP. III-A. —SECTION 19-A deals with relief where too high a Court-fee has been paid. The uncertainty of recovering a debt due to the estate of a deceased person is not a sufficient ground for a proportionate reduction of the fee payable in respect of a will. The value of chose of action depends on particular facts; and, in the absence of materials, the Court may accept the valuation of the person applying for probate. THE VALUATION OF PROPERTY is to be considered on the value as at the date of application for probate. The theory of refund is that the sum charged as fee upon a grant of probate, etc., is excessive, and equitably a refund may be allowed, in the

discretion of the Chief Controlling Revenue Authority, when the conditions specified in this section are fulfilled. The period of six months cannot be extended.

SECTION 19-B deals with relief where debts due from a deceased person have been paid out of his estate, subsequent to the grant of probate, thereby reducing the value of the estate which had come into the hands of executor or administrator. The period of three years allowed under this section may be extended by the Chief Controlling Revenue Authority.

141. MODE OF CALCULATING ESTATE OF DECEASED. —Schedule I, Art. 11 provides for a sliding scale of duty on "THE VALUE OF THE PROPERTY" in respect of which the grant is made. The mode of calculation is to take the nett value of the estate obtained by the deduction of the amount of the debts from the gross value of the estate. Where the property is subject to a mortgage or an annuity, the market-value of the property less the amount of the incumbrance or the capitalized value of annuity is to be taken for purposes of Court-fee duty. Value of a mere right of suit, or chose in action, is generally impossible.

142. RELIEF IN CASE OF SEVERAL GRANTS.—SECTION 19-C provides for exemption from stamp duty upon a fresh grant of probate or Letters of Administration, where the full fee chargeable on a probate at the time it was granted had already been paid in respect of the whole or part of the property comprised in the estate of the same deceased person on the same Will. The exemption from payment of double duty, intended by this section, applies when the first grant was obtained in British India, and is revoked, or annulled, or the property has been left unadministered, or where an executor to whom probate had been granted dies. But, fresh Court-fee is payable on a fresh devolution on the death of beneficiary. The section refers to cases where both the first and second grants had been made after the Court-Fees Act had come into force. No duty is payable where the second grant proceeds upon the first.

143. PROBATES OR LETTERS AS REGARDS TRUST PROPERTY.—SECTION 19-D exempts property held in trust by the testator, but not property as to which the testator had created a trust. Where a European German subject held common property with his wife, under Code Napoleon, Court-fee *ad advorem* was held payable on his half share, after his death, on probate obtained by wife as a survivor. The undivided share of a deceased coparcener in the property of a joint Hindu family, which, under Mitakshara law, passes the interest of deceased by survivorship on his death to his other coparceners is exempt from Court-fee according to CALCUTTA and BOMBAY HIGH COURTS, but the MADRAS FULL BENCH view is that the deceased's own share cannot be said to be held in trust, though he may be said to have held his undivided son's share in that way. Where a Will creates a tenancy-in-common will of course require *ad valorem* probate duty on the deceased's share in the common property.

144. PRIVATE PROVIDENT FUND, ETC.—(1) A sum of money in a private provident fund cannot be deemed to vest in the nominee, or the widow, or the children of the depositor. The fiduciary relationship does not make the company a trustee for the dependent or the nominee of the depositor.

(2) Property which is the subject of a general power of appointment is not the appointer's property so as to be liable to probate duty under the Court-Fees Act.

(3) Where one of two brothers subject to Dayabhaga dies unmarried, the other brother can take out probate or Letters of Administration in respect of deceased's share on payment of *ad valorem* Court-fee; but surviving brother's share is exempt.

145. PENALTY FOR TOO LOW PROBATE DUTY.—SECTION 19-E provides for cases where too low a Court-fee has been paid on probates. This section contemplates an application on the part of the person who has taken out probate, and produces the same to be duly stamped; further that the estimated value of the estate is less than what the value has afterwards proved to be.

Where the statutory requirements are not complied with, the imposition of penalty under the section is *ultra vires*. A suit for declaration is maintainable contesting the competency of order as to penalty by Revenue Authority. A Civil Court has no jurisdiction to review action of Chief Controlling Revenue Authority provided it is within his jurisdiction.

146. ADMINISTRATION BOND.—SECTION 19-F is based on English law. An Administration Bond is required to be given in every case to the District Judge with proper security for the due collection, getting in, and administering the estate of the deceased; but the form may be directed by special or general order.

147. PENALTY ON EXECUTORS IN PROTECTION OF REVENUE.—SECTION 19-G is also based on English law, and provides a penalty for the protection of revenue. The Court can determine whether the imposition of penalty by the Collector is *ultra vires*, but it has no jurisdiction to review the decision of a Revenue Authority.

148. NOTICE BY PROBATE COURT OF APPLICATION AND PROCEDURE IN MOTION FOR INQUIRY.—SECTION 19-H provides for a notice by Probate Court to the Collector of the application for grant of probate or Letters of Administration, and the procedure thereupon for inquiry by Collector, and requisition as to amendment, or decision by Court on a disputed valuation, which shall be final. The procedure as to notice to Collector is designed to afford a check on incorrect valuation. If the Collector has not made a motion under this section, the grant need not be delayed.

It is no part of COURT'S DUTY to check the valuation itself, this being the business of the revenue authorities. But it is the duty of Court to go into questions raised where the applicant

alleges that certain properties have been erroneously included by the Collector. The finding of the District Judge under S. 19-H is final, and no appeal lies against it; but the finding may be reviewed under O. 47, R. 1, Civil Procedure Code.

PROVISO to sub-section gives six months from the lodging of an inventory as required by the statute.

149. PREPAYMENT OF COURT-FEE.—SECTION 19-I provides for payment of Court-fees in respect of probates and Letters of Administration. The form of application for grant of Probate, etc., consists of an application with ANNEXURE 'A'', specifying property and credits of deceased, and ANNEXURE ''B'', of items which the applicant is allowed by law to deduct. The High Court will determine whether the property was or was not rightly included in Annexure B. The provision is imperative, and prohibits an order by Court until the Form is duly filled, and the proper Court-fee has been paid.

The fee required to be paid to the satisfaction of Court must be certified by Registrar and should be produced with the application and the affidavit of valuation. This section contemplates prepayment of duty before an order for grant of probate is made; but there is no bar to the *hearing* of the application for grant, if Court-fee has not been paid. Court-fee can be paid after the report of valuation by Collector, and before the grant of probate, etc. Probate may be obtained IN FORMA PAUPERIS and the fee payable will be the first charge on the estate.

150. ADMINISTRATION FOR PART OF PROPERTY.—An application for grant of Letters of Administration with will annexed in respect of a portion of property need not contain an inventory of the entire property.

Provident Funds do not form part of assets of deceased, and if they are shown as assets, no Court-fee is payable in respect of collection.

151. TESTAMENTARY JURISDICTION.—Section 19-I which applies to all Courts invested with Testamentary Jurisdiction must be applied with reference to S. 5.

152. RECOVERY OF PENALTIES.—Section 19-J provides that the excess fee due under S. 19-H or a forfeiture or penalty under S. 19-G may be recovered as an arrear of land revenue.

153. REALIZATION OF DEFICIT COURT-FEE.—Section 19-K provides that an insufficiently stamped Probate, etc., can be acted upon, and the deficit Court-fee is realizable under Ss. 19-E, 19-G or 19-H of the Act.

154. PROCESS-FEES—CHAPTER IV.—Rules as to costs of processes are provided for, by empowering the High Courts, under provisions of Chapter IV of the Court-Fees Act.

155. SECTION 20 relates to the payment of process fees by the parties to a suit, appeal or revision, and gives the Court acting judicially power to make an order between party and party only as to who should pay process fees. The High Courts are empowered to frame rules regarding the process fee, in their Appellate Jurisdiction, and for Civil Courts subordinate, also for Criminal Courts in case of non-cognizable offences; also rules regarding remuneration of the peons in the execution of the processes issued by Courts. *See* Local Rules and Orders. But the High Court has no power to permit a relaxation of the rules, which have the force of law. The High Court may, from time to time, alter or add to the rules, subject to the confirmation by the Local Government. A TABLE OF PROCESS-FEE in English and vernacular languages shall be exposed to view in a conspicuous part of each Court. THE NUMBER OF PEONS is fixed by the District Judge under S. 22 of the Act; and the remuneration is settled by the High Court under S. 20. A commission issued to an ameen for local investigation is not a process. The number of peons in Revenue Courts is fixed by Collector of a District, subject to the rules framed by the Chief Controlling Revenue Authority and approved by the Local Government.

156. MODE OF LEVYING FEES—CHAPTER V.—Chapter V provides for collection of fees by stamps, which should be impressed or adhesive, or partly impressed or partly adhesive, as the Local Government may, by notification in the local official Gazette, from time to time, direct. *Vide* Appendix for the rules framed by Local Governments under S. 26 of the Act.

A petition of appeal may be filed on several stamps of smaller value, sufficient to make up the full amount required by law, though the petition is written on one paper. When stamp of the full value is available, parties ought to use as small a number of stamps as they can.

157. STAMPING DOCUMENTS INADVERTENTLY RECEIVED.—Unless a document is properly stamped, it is of no validity for purposes of Court-fee (*vide* S. 28 (1) of the Act). Part II of S. 28 provides for orders being given by the presiding Judge, head of office, or Judge of High Court to make good the deficiency. Section 28 is not in conflict with other provisions of the Court-Fees Act in Ss. 9, 10 and 11, nor is it in conflict with the Civil Procedure Code, O. 7, R. 11. This section applies where a document has been received by mistake or inadvertently. It does not apply to probates or to admissions of documents in criminal cases.

158. PLAINT OR MEMORANDUM OF APPEAL INSUFFICIENTLY STAMPED.—It is the duty of the Court to call upon the plaintiff to make good the deficiency in Court-fee stamp on plaint. Time must be allowed for the purpose, and a plaint can be rejected only on plaintiff's failure to meet the deficiency. The time allowed may be extended from time to time, expressly or impliedly.

An insufficiently stamped memorandum of appeal is not valid. Some High Courts have applied O. 7, R. 11 to memoranda of appeals by virtue of S. 107, Civil Procedure Code, but other High Courts have taken a contrary view. When an appeal is filed within time, presentation relates back to original date on making good the deficiency in Court-fee. A decree will not be passed in appeal for an amount not covered by stamp.

159. MISTAKE OF PARTY OR COURT.—A mistake or inadvertence, when discovered, enables the Court to have the proper Court-fee made up. A mistake may not be discovered till the case had gone into appeal, or second appeal. A mistake of party or his adviser eight reasonably be held to be a mistake of Court in some cases. A *bona fide* mistake may be excused, but not where the Court-fee is deliberately inadequate, or counsel is grossly negligent.

160. EFFECT OF PAYMENT OF DEFICIENT COURT-FEE.—No question of limitation arises where the order of Court to make good the deficiency within time allowed is complied with. The date of institution is reckoned from first presentation. Similarly, as regards appeals presented unstamped within period of limitation, where the deficiency is made good after the expiry of time Court-fee is payable on the plaint in accordance with the provisions of the Act as it stood on the date of institution of the suit. It is doubtful if power to call for additional Court-fee can be exercised after decision of case.

161. POWER OF REVENUE OFFICER TO DEMAND COURT-FEE.—A Revenue Officer has the power under S. 28 of the Court-Fees Act to direct the payment of Court-fee in revision when no objection was raised in first Court.

162. AMENDED DOCUMENTS.—Where any document, chargeable with Court-fee, is amended in order merely to correct a mistake and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

163. CANCELLATION OF STAMPS.—A document requiring stamp under the Act shall not be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled. Some High Courts have issued rules for the cancellation of stamps.

A plaint returned for presentation to proper Court does not require payment of additional fee, even if the previous stamp had been cancelled. Court-fee previously paid can be taken advantage of, but institution dates from presentation to Court with jurisdiction, and Court-fee will be leviable under Act in force on date of such presentation.

164. CHAPTER VI contains some miscellaneous provisions. An important provision is found in S. 33 as to admission in *criminal* cases of documents for which proper fee has not been paid in the interests of justice. *Irregular sales of stamps* are

made punishable with imprisonment under S. 34 (3) of the Act. A gift or an exchange of Court-fee stamps is not within this section, nor, is the alteration of name on an unused stamp, not dishonestly covered by the section. The Local Governments have power by notification to reduce or remit fees. *See* Notifications in Appendix to this effect.

165. THE SCHEDULES I AND II.—The Court-fee payable is either a fixed fee or *ad valorem* fee according to the nature of the relief prayed for. The fee is to be calculated according to the scale in force at the time of presenting the plaint or memorandum of appeal. The schedule does not enact anything except the percentage of fees; it is in fact a mere table provided for ready reckoning, and merely supplementary to S. 7.

ARTICLE 1 OF SCHEDULE I is a general article indicating the fee payable in respect of a plaint or memorandum of appeal *not otherwise provided for in the Act*, that is, not falling under any other Article of the Act or second schedule, as it is those schedules alone that indicate the fee. But the ALLAHABAD HIGH COURT observes that the words "*not otherwise provided for in the Act*" relate back to Ss. 7 and 8 of the Act. This article applies to documents presented to subordinate Courts, but a memorandum of appeal presented to High Court is a "*document*" within the meaning of S. 4 of the Act. The Court-fee payable under this article depends upon the "*subject-matter in dispute*" ni the appeal, which is not in all cases the value of the suit as originally filed, but represents the value of the relief granted by the decree which a party wishes to get rid of. An appellant may be allowed to abandon a separable portion of the claim or to limit the appeal to the grounds on which Court-fee had been paid by him.

166. VALUATION OF APPEALS.—The value of an appeal is the value to the appellant, but this may be more or less than the value of the suit, if the character of relief in appeal is different from that in suit. A memorandum of appeal from a decree which gives plaintiff only partial relief is liable to Court-fee on the difference between the relief granted and that claimed on appeal. In a case of appeal from a conditional decree, the plaintiff is liable to Court-fee in appeal on the amount which he calls in question in the memorandum of appeal or cross-objections. A ground of objection going to the whole root of the suit, and which might result in allowing of the appeal *in toto* has to be valued as in suit. Distinct subject-matters in appeal or two separate appeals against distinct orders on cross-appeals have to be valued separately. Separate appeals by parties have to be valued separately according to subject-matter of each appeal. A joint appeal can be valued as a whole.

167. PRELIMINARY AND FINAL DECREES.—An appellant may file separate appeals from preliminary and final decrees, but S. 97, Civil Procedure Code, is no bar to filing a combined appeal, provided there is no bar of limitation. In such

cases Court-fee is payable *ad valorem* on the amount decreed. If Court-fee has already been paid on the value of claim in an appeal from preliminary decree, additional Court-fee is not required on appeal against final decree, except by way of Court-fee on an application. Where the appeal is preferred against successive preliminary decrees, *ad valorem* Court-fee is not reqiured as for different appeals.

168. **COSTS**.—Court-fee is not ordinarily payable on the amount of costs of suit, allowed or disallowed in the discretion of Court, unless it is a distinct subject of appeal. A cross-objection relating solely to costs must bear an *ad valorem* Court-fee.

169. **SCHEDULE I. ARTICLE 2**.—This article refers to Court-fee payable on plaints filed under S. 9 of the Specific Relief Act for summary remedy in cases of recent dispossessions.

170. **SCHEDULE I, ARTICLES 4 AND 5**.—These two articles prescribe fees payable on applications for review of judgment of the trial or Appellate Court, at the instance of either party to the judgment, in all suits (or appeals) liable to *ad valorem* or fixed fees under Schedules I and II of the Act. The liability to pay full stamp accrues on the expiration of 89 days from the date of decree; however, a refund is permitted at the discretion of the Judge when the delay is not due to the laches of the applicant. There is difference of view on the question of proper fee payable on an application for review of judgment in respect of a portion of the subject-matter. It is extremely doubtful if a review petition can be filed *in forma pauperis*.

171. **SCHEDULE I, ARTICLES 6, 7 AND 8**.—These articles deal with the Court-fees payable on copies of judgments, decrees and orders passed by the Civil Court. Article 9 applies where the subject-matter of the suit has no ascertainable money value.

172. **SCHEDULE I, ARTICLE 11**.—According to this article Court-fee is payable *ad valorem* on probate or Letters of Administration: but an application for grant is governed by Art. 1, Sch. II of the Act. The amount or value of the property upon which the duty is payable is the net value obtained by deducting the value of the debts and expenses in Annexure B from the gross-value of the assets to be disclosed in Annexure A; but no duty is leviable if the net value is below Rs. 1,000.

The value of the assets is to be determined on the date of the application, regardless of subsequent changes; and duty is payable only on the amount of the right, title and interest of the testator in the property bequeathed.

173. **SCHEDULE I, ARTICLE 12**.—This article provides for duty paid to Crown is respect of such debts as the applicant requires the succession certificate to enforce or collect; and a certificate may be given for collection of any one or more separate debts of the deceased, but not for the collection of a part of the debt. This article has been the subject of several local amendments.

174. SCHEDULE I, ARTICLES 13, 14.—These articles deal with applications to the High Court for the exercise of its Revisional Jurisdiction under certain statutes.

175. SCHEDULE II, ARTICLE 1 prescribes fixed fees on written applications or petitions as distinguished from plaints, written statements and memorandum of appeal mentioned in Art. 1 of Sch. I. Applications not otherwise provided for, only fall under this article, when presented to Courts specified.

ARTICLES 2 AND 3 deal with applications for leave to sue or appeal as a pauper, under O. 37 and O. 44, Civil Procedure Code.

ARTICLE 4 prescribes fee on plaint or memorandum of appeal in a suit to obtain possession under Mamlatdar Courts Act.

ARTICLE 5 deals with plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy.

ARTICLE 6 prescribes fee on Bail-bonds taken as security for appearance or for good behaviour or for keeping peace, under provisions of the Criminal Procedure Code.

ARTICLE 7 fixes fee on an undertaking under S. 49 of Indian Divorce Act.

176. *M*UKHTARNAMA OR VAKALATNAMA—ARTICLE 10, SCHEDULE II prescribes a fee for mukhtarnama and vakalatnamas when presented for the conduct of any case to any Civil or Criminal Court including a High Court. A mukhtarnama is however not necessary to be filed as authority in criminal cases. A memorandum of appearance is not specifically provided for in the section. A single vakalatnama cannot be filed in a number of consolidated appeals.

177. MEMORANDUM OF APPEAL FROM ORDERS NOT AMOUNTING TO DECREE. ARTICLE 11.—This article prescribes Court-fee on a memorandum of appeal against an order, which is not a decree nor has the force of a decree. The Court-fee on appealable decrees is provided under Sch. I, Art. 1. S. 104 and O. 43, Civil Procedure Code, enumerate appealable orders which have not the force of decree. Section 145, Civil Procedure Code, provides for the liability of a surety. The order against the surety is appealable as a decree, but several Local Governments have rendered such appeals liable to Court-fee under this article. See *Appendix*. Appeals from orders under several Special Acts fall under this article.

178. ARTICLES 12, 13 AND 14.—The Court-fee on a caveat is prescribed in Art. 12 and Art. 13 deals with applications under specified Acts, while Art. 14 prescribes fee on petition in a suit under Native Convert's Marriage Dissolution Act.

179. ARTICLE 17 prescribes a fixed fee in plaints or memorandum of appeal in several suits, *e.g.*, claim suits under Civil Procedure Code; suits by a divided co-sharer or the vendee of an estate or part thereof for having his name separately registered

in the Collector's register; and declaratory suits where no consequential relief is prayed for; suits to set an award or an adoption; and every other suit where a money value estimate of the subject-matter in dispute is not possible and which is not otherwise provided for by this Act.

180. **OTHER FIXED FEES**.—Article 18 prescribes ten rupees for application under Sch. II, para. 17; and the same fee is prescribed for agreements to state case for opinion of Court as provided for in O. 36, R. 1, Civil Procedure Code. A fee of Rs. 20 is leviable under Art. 20 on suits for dissolution of marriage, and under Art. 21 on a plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, and under Art. 22 on a plaint or memorandum of appeal in a suit by reversioner under Punjab Customary Law.

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SUPPLEMENTARY NOTES

1934.

S. 5: add to para. 33 (2).

Where no occasion arose for the Taxing Officer to decide the question of Court-fee on its merits, and there was no "decision thereon" by the Taxing Officer, he having expressly "declined" to enter into the merits of the objection, his order could not be considered to be one under S. 5, so as to operate as a bar to the question of Court-fee being considered by the High Court 5 (*b*).

add to para. 33, F.N. (43), p. 43.

Abdul Samad Khan v. *Anjuman Islamia,* 1934 All. 56=1933 A.L.J. 1537, citing 12 All. 129=(1890) A.W.N. 39 (F.B.) and 32 All. 59=4 I.C. 123.

add to para. 33, F.N. 5 (*b*), p. 45.

Abdul Samad Khan v. *Anjuman Islamia,* 1934 All. 56.

S. 6: add to para. 46, F.N. (36).

cf. *Jagannath* v. *Ramgopal,* 1934 All. 160, where the plaint had not been rejected for deficient Court-fee, but time was given to make good the deficiency under S. 149, Civil Procedure Code.

add to para. 44, F.N. (19).

Jagannath v. *Ramgopal,* 1934 All. 160. An exercise of the Court's discretionary power under S. 149, Civil Procedure, will not be interfered with in revision.

add to para. 43, F.N. (47).

Jagannath v. *Ramgopal,* 1934 All. 160. The order of the Court passed under S. 149, Civil Procedure Code, allowing the plaintiff to make good the deficiency had the effect of giving the plaint "the same force and effect as if such fee had been paid in the first instance".

S. 7 (i): add to para. 60.

In *Mt. Udobai* v. *Ram Autar Singh,* 1934 Lah. 150 (1) a suit for a declaration that plaintiff has a charge on certain properties for money which she had to borrow to meet her monthly expenses, etc., was held to be really a claim for arrears of maintenance, on which Court-fee was payable *ad valorem* under S. 7 (1) of the Act.

S. 7 (ii): add to para. 65.

Similarly, it was held in *Mt. Udobai* v. *Ram Autar Singh,* 1934 Lah. 150 (1), that where a suit comprised a declaration that

the plaintiff is entitled to recover a certain amount per mensem as maintenance allowance from certain properties, this part of the claim was governed by S. 7 (2) Court-Fees Act, and the proper Court-fee payable was on the times the amount of maintenance claimed to be payable for one year.

S. 7 (iv): add to para. 90.

In the Full Bench case of *Narayangunj Co-operative Society* v. *Mafizuddin Ahmed,* it was held affirming the view taken in *Mt. Umatal Batul* v. *Mt. Nauji Koer* (6 C.L.J. 427=11 C.W.N. 705) that S. 7, sub-S. 4, Court-Fees Act, VII of 1870, should be read as controlled by O. 7, R. 11, Cl. (*b*) of the Code of Civil Procedure. But until standard values are laid down by appropriate rules framed under S. 9, Suits Valuation Act, "it would not be possible for the Court to exercise this power except in those class of cases falling under the clause in which the valuation made by the plaintiff is illegal, palpably absurd, manifestly illogical, or arithmetically wrong"—Per Mukerji, J., in 1934 Cal. 448 (F.B.). It was observed that the Judicial Committee, in the case of *Sunderbai* v. *Collector of Belgaun,* (1918 P.C. 135=52 I.C. 897=46 I.A. 15=43 Bom. 376 P.C.) had not affirmed the proposition that in suits of this character plaintiffs are entitled to put their own valuation, and that it is not open to the Court to revise it. Costello, J., agreeing held that it abundantly clear that it was intended that the Court should be in a position to exercise a certain amount of control over the valuation made by the plaintiff." However, at the same time, he recognized "that there are practical difficulties in the way of the Court interfering unless and until appropriate rules are made under the powers conferred by S. 9, Suits Valuation Act."

S. 7 (iv) (b): add to para. 116 at p. 138.

The above conclusive is fortified by the recent decision of the Full Bench of the Lahore High Court in *Asa Ram* v. *Jagannath* (1934 Lah. 563, F.B.), wherein, on a similar review of authorities, it was held "that the concensus of opinion now is that in a suit for partition of joint property, where the plaintiff alleges joint possession, a Court-fee stamp of Rs. 10 is leviable under Art. 17 (6) of the Sch. 2 of the Indian Court-Fees Act, and that S. 7 (*iv*) (*b*) does not apply to such a suit; the ratio-decidendi is that the plaintiff is not enforcing any right to share in joint family property but according to his own allegations, he is already in the enjoyment of his share and merely seeks to change the mode of his enjoyment of the joint property and that the relief, therefore in such a case is not capable of being valued in money. Section 7 (*iv*) (*b*) applies only to cases relating to joint family property where the plaintiff has been ousted from its enjoyment, and seeks to be restored to joint enjoyment. If, however, he has been excluded from joint enjoyment or where he has never been in enjoyment or possession, actual or constructive, of the joint property and desires to separate his share from the other co-sharers, he must sue for possession and partition and in such a case he must pay *ad valorem* Court-fee on his share." Thus the view summed up is "that in a suit to enforce the right to share in joint family property *re* a suit

to be restored to joint possession or enjoyment of joint family property, Court-fee would be payable under Art. 7 (*iv*) (*b*), *ad valorem* on the value of the relief as fixed by the plaintiff, and in a suit for partition of joint property, whether owned by a joint family or otherwise, where the plaintiff alleges that he is in actual or constructive possession thereof, Court-fee payable would be Rs. 10 under Art. 17 (*vi*) of the Sch. II of the Court-Fees Act."

S. 7 (iv) (b): add to para. 120.

The Lahore High Court, has in a recent Full Bench decision, *Asa Ram* v. *Jagannath*, 1934 Lah. 563, (F.B.) passed under review the different cases, in various High Courts, as to the meaning and scope of S. 7 (*iv*) (*b*), and the applicability of Art. 17 (*vi*) of Sch. II, to suits for partition and the conclusion reached is that S. 7 (*iv*) (*b*) applies only to cases relating to joint family property where the plaintiff has been ousted from its enjoyment, and seeks to be restored to joint enjoyment. In such cases of a suit to enforce the right to share in joint family property "*re* a suit to be restored to joint possession or enjoyment of joint family property, Court-fee would be payable under Art. 7 (*iv*) (*b*), *ad valorem* on the value of the relief, as fixed by the plaintiff."

S. 7 (iv) (c): add to para. 262, p. 230.

The Patna High Court, has in a recent decision, *Krityanand Singh* v. *Dinu Manjhi* (1934 Pat. 234) observed that "it has been held in this Court from the very beginning that the valuation of a suit must not be arbitrary; and that it is the business of the Court to look to the valuation and see that it is approximately correct or justifiable". The plaintiff no doubt is entitled to put his valuation of the relief stated in the plaint for the purpose of Court-fees as well as for the purpose of jurisdiction: "but the defendant is entitled to take objection to the valuation given in the plaint, both as affecting the question of jurisdiction as affecting the question of Court-fees; and when objection is taken, the Court is obliged to enter into the question of whether the value is correct."

S. 7 (iv) (c): add to para. 194, p. 188, F.N. (44).

The decision in 1932 Lah. 132 has been relied upon by the Rangoon High Court, in *Daw Min Thwe* v. *C. R. M. C. Chettyar*, (1934 Rang. 152). *Held*, that a suit for declaration that decree is null and void, and for Injunction to stay execution of that decree till decision of suit, comes within S. 7 (*iv*) (*c*), and the value for Court-fee and jurisdiction must be the same.

S. 7 (iv) (c): add to para. 214.

The Rangoon High Court, has held in *Daw Min Thwe* v. *C. R. M. C. Chettyar*, (1934 Rang. 152), that the question of Court-fees must be decided in accordance with the prayer which is made in the plaint, and where the prayer in the plaint was plainly of two parts, namely, first for a declaration, and secondly, for an injunction, (Temporary), the plaint, as it stood was plainly a suit for a declaration plus a consequantial relief.

S. 7 (iv) (c): add to para. 131.

It has been pointed out by the Full Bench of Allahabad High Court, in *Lakshmi Narain Rai* v. *Dip Narain Rai* (1932 All. 485 =139 I.C. 32=54 All. 812, F.B.), followed in *Abdul Samad Khan* v. *Anjumun Islamia, Gorakhpur,* 1934 All. 56, that where the plaintiff deliberately seeks the relief of declaration with no consequential relief, such as the cancellation of an instrument, *ad valorem* Court-fee is not payable. The same view has been taken in another Full Bench case of the same High Court, in *Sri Krishna Chandra* v. *Mahabir Prasad,* (1933 All. 488), where it was held that "where the plaintiff merely asked for a declaration that the previous decree was not in any way binding on him and was altogether void and ineffectual, the suit was one for obtaining a declaratory decree only, and fell under Art. 17 (*iii*), Sch. II, Court-Fees Act, and the Court-fee of Rs. 10, paid by him was sufficient".

S. 7 (iv) (c): add to para. 144, p. 157.

The Allahabad High Court has held, in a number of cases, that where the plaintiff deliberately seeks the relief of declaration, with no consequential relief, such as the cancellation of an instrument, *ad valorem* Court-fee is not payable, and the case falls under Art. 17 (*iii*) of Sch. II, of the Act. (*Vide,* 1932 All. 485=139 I.C. 32=54 All. 812 [F.B.], 1933 All. 488 [F.B.] and 1934 All. 56.)

S. 7 (iv) (c): add to paras. 144, 145.

Illustration (*b*): where the plaintiffs brought a suit for declaration that a simple money decree against their father was not binding on them, and that the joint family property which they had obtained by right of survivorship was not open to attachment in execution of the said decree, the consequential relief was implicit in the declaration asked for [*Lallo Prasad* v. *Sahebdin Singh,* 1934 Oudh 212 (1)].

S. 7 (iv) (c): add to para. 240.

Where the plaintiff sued for removal of defendants on a declaration that they had no manner of the *Shebait* rights to the properties described in the plaint, and also for appointment of the plaintiff or any other competent person as shebait, and a permanent injunction was prayed to be issued in order that the defendants in the suit may not waste or possess the debutter properties, held that the prayer for a declaration could not be made in the case, as the plaintiff was not entitled to possession of the debutter properties in his personal right, and the object of the suit was merely to exclude defendants from the management of debutter properties and interference with the same, and in this view of the case, *ad valorem* Court-fee was not necessary on the valuation of debutter properties. (*Vide, Hriday Kishore Nandi* v. *Hari Bhusan Dey,* 1934 Cal. 250.)

S. 7 (iv) (f): add to para. 303.

Where the plaintiff had valued a suit for money on unsettled accounts tentatively at Rs. 8,000, for purpose of Court-fee, and jurisdiction, and after a preliminary decree for accounts, the Com-

missioner reported that a sum of Rs. 9,825, was due by the defendant to the plaintiff, but the Court, after hearing defendant's objection, passed a final decree for Rs. 3,375, only in favour of the plaintiff against the defendant, a Bench of three Judges referred the question to a Fuller Bench, with the following observations briefly. That so far as the Lahore High Court, and its predecessor the Chief Court of the Punjab are concerned, two propositions seem to be well-established: (1) that in a suit for accounts, the amount found by the trial Court to be due to the plaintiff, and not the valuation put by him upon the relief asked for in the plaint must be regarded as the value of the suit for purposes of determining the forum of appeal, and (2) that a Court cannot pass a decree for a sum larger than and beyond the limits of its pecuniary jurisdiction. But, the phrase "value of the original suit" meant the value of the relief claimed in the plaint and the forum of appeal would be determined by the valuation put upon his claim by the plaintiff himself. The view of the majority of the Calcutta High Court in *Ijjatulla Bhuyan* v. *Chandra Mohan Banerjee* (34 Cal. 954=11 C.W.N. 1133=6 C.L.J. 255 F.B.), cannot be supported on any sound principle and the rider which Mookerjee, J., was pleased to add, does not lead to any satisfactory result. The view of law in 9 Lah. 23=110 I.C. 631=1928 Lah. 157 was held to be incorrect, and the decisions of Allahabad, Madras and Nagpur Courts were agreed to. But Broadway and Tekchand, JJ. were of opinion that the Full Bench cases of the Chief Court in *Muhammad Afzal Khan* v. *Nand Lal* (16 P.R. 1908 F.B.), and *Abdur Rahman* v. *Charag Din* (19 P.R. 1908 F.B.), and of the High Court, in *Sunder Das* v. *Mt. Umda Jan* (1925 Lah. 1=82 I.C. 614=5 Lah. 481 F.B.) and *Jaswant Ram* v. *Moti Ram* (1926 Lah. 376=96 I.C. 890=7 Lah. 570 F.B.) were not to be challenged without a full consideration of the arguments for and against.

S. 12: add to para. 509.

A Full Bench of the Allahabad High Court, has held in *Messrs. Gupta & Co.* v. *Messrs. Kirpa Ram Bros.*, (1934 All. 620) that the word "case" is wider than, and not the exact equivalent of the word *"suit"*. At the same time, it may not be so wide as to include every order that is passed by a Court during the trial of a suit or proceeding pending before it. Where the case is a proceeding which can be considered separate and distinct and is finally disposed of by an order which terminates it, it may well be considered to be a case decided although the suit has not in one sense been completely disposed of. Accordingly, it was held that a mere decision as to the amount of the Court-fees payable does not amount to a "case decided" nor is it necessarily an irregularity in procedure or illegality or a refusal to exercise jurisdiction. The decision in 1933 All. 350=148 I.C. 152=55 All. 274, was held to be erroneous.

S. 12: add to para. 509, F.N. (33).

Cf. 1934 All. 620, F.B. (*Messrs. Gupta & Co.* v. *Messrs. Kirpa Ram Bros.*) where it was held that a mere decision as to the amount of Court-fee payable does not amount to "case decided"

within the meaning of S. 115, Civil Procedure Code and no revision lies on such decision.

S. 19 (iii): add to para. 612.

It has been held by the Allahabad High Court, in In re, *Indian States Bank, Ltd.* v. *Mt. Rukmini Rani,* (1934 All. 332) that the rule should not be interpreted to exclude the written statement in a miscellaneous case. Accordingly, that exemption from stamp duty extends to written statements in a miscellaneous case.

S. 19-H: add to para. 643.

It has been held by the Chief Court of Oudh in *Deputy Commissioner, Lucknow* v. *Mrs. M. D. Aikman,* that if a husband enters any shares in the names of himself and his wife, then it is an advancement for the benefit of the wife, absolutely if she survives her husband. Hence on the wife's survival, such shares are not property of her deceased husband. The wife then is not liable to pay Court-fees on the value of the shares. The expression "valuation of the property" means valuation of the property of the deceased.

Sch. I, Art. 1: add to para. 728 (5).

The Oudh Chief Court has held in *Harihar Baksh Singh* v. *Lachhman Singh,* (1934 Oudh 246) that cross-objections in appeals arising out of redemption suits must be stamped *ad valorem* on the amount by which the decretal amount is sought to be reduced.

Sch. I, Art. 1: add to F.N. (5) on p. 597.

Also see *Harihar Baksh Singh* v. *Lachhman Singh,* 1934 Oudh 246, where 11 I.C. 198 is relied upon.

Sch. I, Art. 1; Sch. II, Art. 17 (vi): add to para. 740.

It was observed, by Mukerji, J., in *Akhil Bandhu Guha* v. *Sm. Suradhuni Debya Chowdhurani,* (1934 Cal. 377) that it has not been the policy of the law to tax with Court-fees *ad valorem* every advantage which a party is seeking for in Courts. Accordingly, where the mortgage-decree ignored prior mortgagee's claim as such, and the prior mortgagee prayed for decree in form 10, App. D, with liberty to sell property covered by his subsequent mortgage, but not included in mortgage in suit, the appeal was held to have arisen out of a suit which is not otherwise provided for by the Act, but it was not possible to estimate at a money-value the subject-matter of the dispute in appeal, and the case was one requiring Court-fee under Art. 17 (*vi*), Sch. II, of the Act.

Sch. I, Art. 12: add to para. 817.

It has been held in *In re, Nalinikanta Pal,* (1934 Cal. 38), that under the Court-Fees Act, Sch. I, Art. 12, as amended by Bengal Act 2 of 1922, S. 8, duty is payable on the total amount where the certificate extends beyond Rs. 1,000, at the rate of 2 per cent. on the original certificate, and 3 per cent. in respect of the extensions.

Sch. II, Art. 6: add to para. 851.

Where on an application by judgment-debtor to the Appellate Court, the stay of execution is granted subject to the furnishing of a security, the bond imposing a personal obligation on the surety, is taken as duty stamped, if it has been stamped under Art. 6, Sch. II of the Court-Fees Act, and it is not invalid merely because it was not stamped as required by the Stamp Act. The ruling in 1929 Lah. 205, based on a Full Bench of the Calcutta High Court in 53 Cal. 101 F.B., has been approved in 1933 Lah. 89 and the same view has been recently upheld in *Jowalamal and Kanshi Ram Narain* v. *Gian Chand & Co.* (1934 Lah. 228).

Sch. II, Art. 17 (vi).

(1) In a suit for declaration that a decree against father is not binding against sons, the declaration is deemed to carry the consequential relief that the joint family property in their hands is not liable under S. 53, Civil Procedure Code, 1934 Oudh 212 (1) (*Lallo Prasad* v. *Sahebdin Singh*).

(2) Where plaintiff deliberately omits the consequential relief he ought to sue for, the Court-fee is not *ad valorem*, though plaintiff may have offended against S. 42, Specific Relief Act. (*Abdul Samad Khan* v. *Anjuman, Islamia,* 1934 All. 56.)

(3) A suit claiming recovery of arrears of maintenance out of certain property, and comprising a declaration that plaintiff had a charge on the same properties for amounts barrowed for monthly expenses, etc., does not fall under Art. 17 (*vi*) of Sch. II, in respect of the latter claim: but Court-fee is payable *ad valorem* under S. 7 (*i*) of the Act. [*Mt. Udobai* v. *Ram Autar Singh,* 1934 Lah. 150 (1)]

(4) When a party appeals on the ground that interest should have been allowed up to the date of realization, the proper Court-fee payable on the memorandum of appeal is Rs. 10 as provided by Art. 17, Cl. 6, Sch. II, Court-Fees Act, (*Mt. Bhagwanti* v. *Atma Singh,* 1934 Lah. 32: following *Bhawani Prasad* v. *Kutubunnissa Bibi,* 27 All. 559=1905 A.W.N. 84=2 A.L.J. 263).

Title _____

Author _____

Accession No. _____

Call No. _____

Borrower's No.	Issue Date	Borrower's No.	Issue Date

THE
COURT-FEES ACT (VII OF 1870)

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called THE COURT-FEES ACT, 1870.

Extent of the Act.

It extends to the whole of British India;

Commencement of Act.

And it shall come into force on the first day of April, 1870.

Synopsis.

1. Scope and Objects.
2. Title of the Act.
3. Extent of Application.
4. Exemptions.
5. Retrospective operation of Acts of Procedure.
6. Scheme of the Act.
7. Principles of Construction of Statute.

Comments.

1. **SCOPE AND OBJECTS.**—It has been observed, by Mahmood, J., in *Balkaran Rai* v. *Gobind Nath Tiwari*,[1] that the Act "begins WITHOUT A PREAMBLE, and leaves it to the Judges to decide what its objects were, and to gather those objects from the enacting clauses". It was held by the same learned Judge, in an earlier case,[2] that although the Act is without a preamble, its object "is to lay down rules for the collection of one form of taxation," and that this may be regarded as the scope of the enactment. No doubt, one of the main purposes of the Act "is to levy fees for services to be rendered by Courts and public officers,"[3] and, as stated by Edge, C.J. "the Act was primarily passed for the purpose of prescribing the fees which are to be paid in respect of documents to be used in Courts"; but "it also provides in the Schedules for the stamps to be used in certain offices other than offices of Courts of Justice"; and, that the "Act not only prescribes the fees, but provides how those fees are to be ascertained, how questions as to the sufficiency of

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(1) 12 All. 129 at p. 164=(1890) 10 A.W.N. 39 (F.B.).

(2) *Muhammad Salim* v. *Nabian Bibi*, 8 All. 282.

(3) Per Miller, J. in *Gavaranga Sahu* v. *Botokrishna Patro*, 32 Mad. 305=1 I.C. 507 (F.B.).

fees on documents, so far as Courts are concerned, are to be determined, and the conditions under which only the documents included in the First and Second Schedules to the Act may be received, filed, registered or used, as the case may be, in Courts in India. The Court-Fees Act also specifies the documents which need not be stamped under that Act for the purpose of being used in Courts."[4] The Court-Fees Act is essentially a fiscal and taxing enactment, but its primary object is to provide for and protect the revenue, and not to coerce the subject;[5] and to the same effect is the observation by their Lordships of the Privy Council in *Subrao* v. *Venkatrao*.[6] "The Court-Fees Act was passed not to arm a litigant with a weapon of technicality against his opponent, but to secure revenue for the benefit of the State". From the Statement of Objects and Reasons for the Bill when proposed to the Legislature, in 1869, it appears that the Act is an AMENDING AND CONSOLIDATING ACT, which reduced, or exempted Court-fee in suits of a certain nature, and aimed at having the whole of the law relative to fees in all Courts of Justice included in one enactment.[7]

2. **TITLE OF THE ACT.**—The title of an Act can be referred to, to explain an enacting clause which is doubtful,[8] and for ascertaining the general scope of the Statute.[9] The title of this Act indicates that the Stamp Revenue proper is sought to be distinguished from the revenue derived from "Judicial Stamps," now designated "Court-fees".[10]

3. **EXTENT OF APPLICATION.**—The Act extends to the whole of British India. The term "British India" has been defined in S. 3, Cl. (7) of the General Clauses Act, X of 1897, to mean "all territories and places within Her Majesty's Dominions, which are for the time being governed by Her Majesty through the Governor-General of India or through any Governor or any other officer subordinate to the Governor-General of India". The Act has subsequently been extended to the Santhal Parganas,[11] to British Baluchistan,[12] to the sub-division of Angul,[13] and to Upper Burma generally (except the Shan States),[14] to the Chittagong Hill

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(4) Per Edge, C.J., in 12 All. 129 at p. 139, *supra*.

(5) Per Manuk, J., in *Chandramani Koer* v. *Basdeo Narain Singh*, 49 I.C. 442 (449), (Patna).

(6) 1918 P.C. 188=43 Bom. 507=46 I.A. 24=50 I.C. 280 (P.C.); *also see* 29 L.W. 42 and 34 C.W.N. 1129.

(7) See *Gazette of India*, 1869, Part V, p. 57; also see, *Ibid.*, 1869 Supplement, pp. 1179 and 1452 and 1870 Supplement, pp. 52, 378, 421, 427 and 434.

(8) *Harrochander* v. *Shoorodharni*, 9 W.R. 402.

(9) *Furton* v. *Thorley*, (1903) A.C. 443 (447).

(10) Statement of Objects and Reasons, 28th September, 1869.

(11) Regulation III of 1872, as amended by Regulation III of 1899.

(12) Regulation I of 1890.

(13) Regulation I of 1894.

(14) Act XIII of 1898.

Tracts,[15] and the Pargana of Manpur.[16] It is also in force in the Scheduled Districts of Hazaribagh,[17] Manbhoom,[18] Lohardagga,[19] Ganjam and Vizagapatam,[20] the Pargana Dhalboom,[21] and the Terai of the Province of Agra.[22] It has been applied by Notification, under S. 5 of the Scheduled Districts Act XIV of 1874, to the Kohlan in the District of Singhboom;[23] and, by notifications under Ss. 5 and 5-A of that Act to the Districts of Garo Hills, the Khasi and Jaintia Hills, the Naga Hills, the North Cachar Sub-division, the Mikir Hill tract, Nowgong, and the Dibrugarh Frontier tract, Lakhmipur District, and the Lushai Hills, with certain reservations.[24]

The Act is in operation in Aden,[25] and in Baluchistan Agency territories;[26] but is not applicable in Singapore,[27] nor in the Civil Station at Wardhan,[28] nor in the Kathiawar States.[29] But the provisions of the Act apply in the Native State of Mysore, as per Instrument of Rendition, 1881; and in the Hyderabad Assigned Districts, the Hyderabad Residency Bazars, the Cantonment of Secunderabad, and the Civil and Military Station, Bangalore.[30] The Act does not apply to Military Courts of Requests.[31]

4. **EXEMPTIONS.**—The Act has been declared inapplicable to proceedings instituted before Settlement Officers, under the Santhal Parganas Settlement Regulation III of 1872, S. 8, as amended by the Santhal Parganas Justice and Laws Regulation XIII of 1899, Bengal Code, Vol. I. This was so held in a suit instituted before Settlement Officer and transferred to a Civil Court under section 5 of that Regulation.[32] The Act does not apply to applications under S. 105 (1) and (2) of the

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(15) Regulation I of 1900, Modification No. 5702, Ex., 11—4—1927.
(16) Manpur Laws Regulation II of 1926.
(17) *Gazette of India*, 1881, Part I, p. 507.
(18) *Ibid.*, p. 509.
(19) *Ibid.*, p. 508.
(20) *Ibid.*, 1898, Part I, p. 869.
(21) *Ibid.*, 1881, Part I, p. 510.
(22) *Ibid.*, 1876, Part I, p. 505.
(23) *Ibid.*, 1907, Part I, p. 655.
(24) *Assam Gazette*, 1897, Part I, p. 861; *Gazette of India*, 1884, Part I, p. 164; and *Ibid.*, 1901, Part I, p. 913.
(25) *Bombay Government Gazette*, 1876, Part I, p. 956; and Aden Laws Regulation, 1891, S. 2.
(26) Baluchistan Agency Laws, 1890, S. 4 (1), Bal. Code.
(27) Straits Settlements Act, 1866, S. 1.
(28) *Emperor* v. *Chimanlal*, 17 I.C. 534 (O.R. 9 Bom. 244); Ref. 10 Bom. 186 (Rajkot not part of British India).
(29) *Hemchand* v. *Sakarlal*, 33 Cal. 219=30 I.A. 1=8 Bom. L. R. 129 (P.C.).
(30) *See* Ayyar's Court-Fees Act, p. 8; but see and cf. In re *Ramakrishna*, (1888) 12 Mad. 49.
(31) Ayyar, p. 8.
(32) 12 C.W.N. 917.

Bengal Tenancy Act, 1885 (Act VIII of 1885).[33] The amount of fee payable in certain cases in the Province of Agra, under S. 170 of the Agra Tenancy Act, is to be computed as in the Fourth Schedule to the Act.[34]

5. **RETROSPECTIVE OPERATION OF THE ACT.**— The question, whether a statutory rule, or provision of fiscal law, is to have retrospective operation is one of CONSTRUCTION OF STATUTE, to be determined from the language of the enactment, and the intention of the Legislature as gathered therefrom. THE GENERAL RULE IS THAT ENACTMENTS IN A STATUTE ARE TO BE CONSTRUED TO BE PROSPECTIVE, not retrospective in their operation.[35] To this rule there are TWO EXCEPTIONS:—(*a*) when Acts are expressly, (or by necessary implication), declared to be retrospective; and (*b*) when they only affect the procedure of the Court.[36] Generally, "a retrospective operation is not to be given to a Statute so as to impair an existing right or obligation" . . . . "and it ought to be construed as prospective only;"[37] but, ORDINARILY, CHANGES OF LAW RELATIVE TO PROCEDURE HAVE RETROSPECTIVE EFFECT, and must apply to all proceedings or actions commenced before or after the passing of the Act.[38] As remarked by Pollock, C.B., in the leading case of *Wright* v. *Hale*,[39] "there is a considerable difference between new enactments which affect vested rights, and those which merely affect the procedure in Courts of Justice". "When an Act alters the proceedings which are to prevail in the administration of justice, and there is no provision that it shall not apply to suits then pending, it does apply to such actions". The rule is thus laid down by their Lordships of the Privy Council in *Delhi Cloth and General Mills Company* v. *Income-tax Commissioners*,[40] as authoritatively enunciated by the Board in *Colonial Sugar Refining Company, Ltd.* v. *Irving*,[41] "that while provisions of a Statute dealing

(33) S. 105 (3), Bengal Tenancy Act, II of 1901.

(34) U.P. Act, II of 1901; U.P. Code, Vol. II.

(35) Per Scott, J., in *Javanmal Jitwal* v. *Muktabai*, 14 Bom. 516 (525); *Karar Hassan* v. *Mustafa*, 26 I.C. 743=86 P.R. 1914; also see per Mitter, J., in *Jiban Krishna* v. *Abdul Kader*, 1933 Cal. 435 at p. 437 (S.B.) relying on *Muhammad Abdussamad* v. *Qurban Husain*, (1904) 26 All. 119=31 I.A. 30 (P.C.), and *Colonial Sugar Refining Company* v. *Irving*, (1905) A.C. 369; approved in *Delhi Cloth and General Mills* v. *I. T. Commissioners*, 1927 P.C. 242=54 I.A. 421=106 I.C. 156 (P.C.); also see *Pars Ram* v. *Emperor*, 1931 Lah. 145=131 I.C. 353 and *Balaji Singh* v. *Chakka Gangamma*, 99 I.C. 143=1927 Mad. 85 and *Ko Po Kun* v. *M. A. L. Firm*, 140 I.C. 156 (Rang.).

(36) *See* 14 Bom. 516 (525), *supra*.

(37) *See* 1933 Cal. 435 (437), *supra*.

(38) 19 Bom. 204 (*Balkrishna* v. *Bapu Yesa Ji*); also see *Munjhoori Bibi* v. *Akel Mahmud*, 19 I.C. 793=17 C.L.J. 316 (345)=17 C.W.N. 889; *Budhu Kumar* v. *Hafiz Hussain*, 20 I.C. 821=18 C.L.J. 274; *Gopeshwar Pal* v. *Jiban Chandra*, 24 I.C. 37=41 Cal. 1125, relied in *Promotha Nath* v. *Sourav Dasi*, per Mookerjee, A.C.J., 58 I.C. 327 (330) and 26 P.R. 1900.

(39) 30 L.J. Ex. 40; 6 H. and N. 227.

(40) 106 I.C. 156 at p. 158 (P.C.), cited in 1933 Oudh 274, 275.

(41) (1905) A.C. 369=74 L.J. P.C. 77=92 L.T. 738=21 T.L.R. 513; also see *Harlal* v. *Lala Prasad*, 1931 Nag. 138 (140).

merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the Statute are not to be applied retrospectively in the absence of express enactment or necessary intendment''. The general principle of non-retrospectivity is not applicable to matters of mere procedure, which do not deprive parties of a right they have actually acquired, unless they are expressly made so. As held, per Wilde, B. in *Wright* v. *Hale*,[42] ''when a new enactment deals with rights of action, unless it is so expressed in the Act, an existing right of action is not taken away. But where the enactment deals with procedure only, unless the contrary is expressed, the enactment applies to all actions commenced before or after the passing of the Act''. Thus any enactment affecting procedure must be given effect to at once, unless expressly prohibited.[43] This is on the ground stated by Mellish, L.J., in *Republic of Costa Rica* v. *Erlanger*,[44] that ''no one has any vested interest in the course of procedure''; and, as held by James, L.J., in *Warner* v. *Murdoch*,[45] that ''no one has a vested right in any particular form of procedure''. AN AMENDING ACT MAY, HOWEVER, BE DECLARED NOT TO COME INTO FORCE AT ONCE, but may be postponed for some time, for example, when the Court-fee is raised on suits of a certain description. Where the statute contains a clause to that effect, the hardship of its retrospective operation may be taken to have been contemplated and duly provided for by the Legislature.[46] The Legislature no doubt possesses the POWER TO DIVEST EXISTING RIGHTS, but it is to be presumed that it is generally unwilling to do so, and consequently, ''unless an intention to the contrary is clear, an Act is to be construed as operating only on cases or facts which come into existence after the Act, and not retrospectively on cases or facts which had come into existence before the Act''.[47] But, ''if a statute deals merely with the procedure in an action, and does not affect the rights of the parties, it will be held to apply *prima facie* to all actions, pending as well as future''.[48]

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(42) (1861) 6 H. and N. 227=30 L.J. Ex. 40, cited in *Naqi Ahmad* v. *Sheo Shankar*, 1933 Oudh 274 (275).

(43) *Naqi Ahmad* v. *Sheo Shankar*, 1933 Oudh 274 (275).. See and cf.. *Chengayya* v. *Kottaya*, 1933 Mad. 57 (where the repealing statute expressly, or by necessary implication, affected a right acquired beforehand in a legal proceeding).

(44) (1876) 3 Ch. D. 62.

(45) (1877) 4 Ch. D. 750=46 L.J. Ch. 121=35 L.T. 748.

(46) Per Chatterji, J., in *Munjhoori Bibi* v. *Akel Mahmud*, 19 I.C. 793, *supra;* also see *Bana Bibi* v. *Chandrabhaga*, 1931 Nag. 60=132 I.C. 450. (An amending statute can never be retrospective when it itself lays down that the amendments would not affect transactions before a certain date).

(47) *Hindusing* v. *Mangal*, 1923 Nag. 227=72 I.C. 438.

(48) *Kimbray* v. *Draper*, (1868) L.R. 3 Q.B. 163, cited in 26 P.R. 1900 (In the goods of *E. T. Field*).

It may be pointed out, that an affirmative statute giving a new right, does not of itself and of necessity, destroy existing right, and if the creation of a new right is possible under conditions which prevent its imposing any corresponding new obligation on, or its interfering with any vested rights in others, the reason of the rule ceases to exist, and there may not be any objection to such statute having retrospective operation.[49] The rule is stated "that a statute which takes away or impairs vested rights acquired under existing laws, or prejudicially affects the legal character of past transactions, by creating a new obligation, attaching a new disability, or imposing a new duty, must be presumed to be intended not to have a retrospective effect."[50] On the other hand, where a change in procedure law would mean the divestment of pre-existing right, the presumption against its retroactivity would equally apply.[1] Thus, even as regards statutes relating to procedure, the rule of retroactivity is not given effect to, where the new procedure would prejudice rights established under the old statute.[2] This proposition was affirmed by their Lordships of the Privy Council in *Colonial Sugar Refining Company, Ltd.* v. *Irving*,[3] which decision has been followed by a Full Bench of the Madras High Court,[1] in preference to an *obiter dicta* of their Lordships in a later case.[4] The right of appeal belonging to a suitor is held to be a vested right, and not a mere matter of procedure.[5]

The case-law in India, bearing upon the Court-Fees Act, may now be examined in the light of above principles.

In 7 W.R. 452 (462), OBJECTIONS BY WAY OF CROSS-APPEAL were not entertained where stamp duty was not paid under new Act, though stamped properly under the law before the passing of that Act. In 7 W.R. 461, where a PETITION OF APPEAL was returned for irregularity, and re-presented after new Act came into force, stamp duty prescribed by new law was held chargeable. In 15 W.R. 272 it was held that the stamp duty upon an appeal filed after the Court-Fees Act came into operation can only be levied according to the provisions of that Act, even though the original

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(49) *Harendra Kumar* v. *Secretary of State*, 1928 Cal. 808, citing *O'Flaherty* v. *McDowell*, (an affirmative statute destroys pre-existing right where the apparent intention of the Legislature is that the two rights should not exist together).

(50) *Gopeshwar* v. *Jiban Chandra*, 24 I.C. 37=41 Cal. 1125 (S.B.); also see *Asikannissa* v. *Dwijendra*, 129 I.C. 878=1931 Cal. 92=58 Cal. 167.

(1) *Daivanayaga* v. *Renukambal*, 106 I.C. 616 at 619 (Mad.) (F.B.).

(2) *Munjhoori Bibi* v. *Akel Mahmud*, 19 I.C. 793, *supra*.

(3) (1905) A.C. 369=74 L.J. P.C. 77=92 L.T. 738; *also see* 1928 Cal. 640=56 Cal. 512=113 I.C. 49; 129 I.C. 849=1931 Cal. 100.

(4) (1922) 1 A.C. 249 (254)=91 L.J.P.C. 113.

(5) *See* 106 I.C. 616 (Mad.) (F.B.), *supra*, and 24 I.C. 37 (F.B.) *supra*; compare 134 I.C. 450=1932 All. 30 (*Hazari* v. *Maktula*), and 1931 All. 635=1931 A.L.J. 1018 (F.B.) (*Ramkaran* v. *Ramdas*) (but a right to sue in one Court, rather than another, or a right to wait for a particular period of time before suing is not a substantive right).

suit was valued on principles laid down in old Act of 1867. The Madras High Court held in 4 Mad. 220 that the subject-matter in appeal should be valued for the purpose of jurisdiction according to the law in force at the date of the appeal, and not of the suit which led to it; similarly, in 5 M.H.C.R. xliv, it was held that the valuation of an appeal must be according to the Act in force at the time of its presentation, and that the original valuation under a law obsolete at the period of appeal can have no influence on the decision. The view taken in these authorities is not reconcilable with the observation of their Lordships of the Privy Council in (1905) A.C. 369, *supra,* which held that a right of appeal to a superior tribunal is not a mere matter of procedure, but one touching a vested right in existence at the passing of a statute; and, consequently, where during the pendency of a suit, a statute was passed taking away a right of appeal from one tribunal, and transferring it to a new tribunal, there was no difference in principle from abolishing the appeal altogether, and, "there was an interference with existing rights contrary to the well-known general principle that statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested".[6] Accordingly the Full Bench of the Madras High Court[7] held that the right of appeal to a higher Court depending on the jurisdictional value on the date of the plaint cannot be taken away by an amending enactment altering the Court-fees. The same principle had already been enunciated by the Bombay High Court in a case decided in 1869,[8] and by the Madras High Court in a case decided in 1874,[9] which latter held that it is the *money value of the original suit* that fixes the jurisdiction throughout the subsequent litigation in its several stages, and this valuation cannot be altered after the decree has been passed simply by an alteration in a fiscal enactment. This view is supported by a recent Nagpur case, where it was held that the value of a suit remains unchanged in all stages of the *lis,* and determines the forum of appeal.[10] Where a suit had been instituted in June, 1920, before the coming into force of the Bengal Court-Fees (Amendment) Act of 1922, the Court-fees were held payable on the PLAINT in accordance with the provisions of the Court-Fees Act of 1870 as it stood at the date of the institution of the suit, that is to say, without any reference to the provisions of the Amend ing Act.[11] The decision in *Aradhun Dey* v. *Gholam Hussain*[12] was distinguished on the ground that the memorandum

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(6) *See* f.-n. (3) at p. 6, *supra.*

(7) *See* f.-n. (1) at p. 6, *supra.*

(8) *Ratanchand* v. *Hanmantrav,* (1869) 6 B.H.C.R. 1166.

(9) (1874) 7 M.H.C.R. 356.

(10) *Chunilal* v. *Kishandas,* 89 I.C. 407=1926 Nag. 71; also see *Raja of Bobbili* v. *Sitaramasami,* 23 Mad. 99 (P.C.) and *Dhupati* v. *Perindevamma,* 33 I.C. 602=39 Mad. 725 (F.B.), (Valuation of suit for account, in plaint, governing valuation for purposes of appeal).

(11) *Tara Prasanna* v. *Nrisinha,* 81 I.C. 763=1924 Cal. 731=51 Cal. 216.

(12) 7 W.R. 461.

of appeal in that case was presented to the Court without a copy of the decree, and it could not be received as the fundamental document was not annexed; and that a new Stamp Act of 1867 had come into operation before it was refiled with the copy of the decree.[13] Similarly, it was held in a Calcutta case, that if between the *date of presentation of plaint* in the wrong Court, and its presentation *to the proper Court,* the Court-fees payable on the plaint has been enhanced, the plaintiff must pay the Court-fees payable on the plaint on the date on which the plaint is presented to the proper Court, after deduction of the amount already paid by him.[14] In *Lachmi Prasad* v. *Secretary of State*[15] the Patna High Court held that if a plaint not properly stamped is presented to a Court not having jurisdiction, and is subsequently returned for presentation to the proper Court, the latter Court is not bound to treat the plaint as properly stamped, even though no objection was taken to it by the Court to which it was first presented. Likewise, where a MEMORANDUM OF APPEAL was presented during the long vacation, not to the Registrar who was duly appointed to receive the appeals, but to the Assistant Registrar, and meanwhile before the re-opening of the High Court, the new Amending Act (Act II of 1922) came into force, it was held that the new Act, prescribing an enhanced fee, was applicable to the case.[16] Where an application to sue *in forma pauperis* is granted, the suit is deemed to have been instituted on the date when the application was made: and the Court-fee is leviable under O. 33, R. 10, Civil Procedure Code, as payable according to the law in force on the date on which the application for leave to sue as pauper was made.[17]

THE GRANT OF A PROBATE on payment of succession duty in accordance with the scale of Court-fee then in force, is not affected by any interim modification introducing a higher rate, and no further Court-fee can be levied for granting a second probate in respect of the same estate.[18] In 6 B.L.R. App. 137=21 W.R. 246, note, the first grant had been made, and a fixed duty paid thereon under Succession Act, 1865, while the second grant was made after the Court-Fees Act had come into force. In the goods of *Malcolm Gaspar*[19] it was held that S. 19 (*c*) of the Court-Fees Act could not apply unless both the first and second grants had been made after the amended Act had come into force. But the later Calcutta case holds that no fresh duty is payable on a double probate which recites and in fact proceeds upon the first.

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(13) *See* f.-n. (11) at p. 7, *supra.*
(14) ***Bimala Prosad*** v. ***Lalmonidevi,*** 91 I.C. 862=1926 Cal. 355.
(15) 1931 Pat. 39.
(16) ***Anand Ram*** v. ***Ramgulam,*** 2 Pat. 264=71 I.C. 426=1923 Pat. 150; *also see* 10 Bom. H.C. 444.
(17) ***Kaman Mada*** v. ***Mallai,*** 91 I.C. 302=1926 Mad. 159.
(18) *Swarnamoyi* v. *Secretary of State,* 30 I.C. 394=43 Cal. 625.
(19) 3 Cal. 733=2 C.L.R. 436.

In *Gangaram Tillockchand* v. *The Chief Controlling Revenue Authority*,[20] Crump, J., held, that the probate duty was payable upon the grant of probate, and not upon the application for probate, and accordingly the law in force *at the date of the grant* was applied to determine the amount at the higher rate which come into operation after the date of the petition, but before any grant of probate was made. This differed from the view taken by the Calcutta High Court in *Thaddens Nabapiet* v. *Secretary of State for India*,[21] to the effect that the petitioner was competent to comply with S. 19-I at the time when he actually made the payment, and as that payment was before the legislation came into force, whereby the rate of fees was raised, he had complied with the requirements of the Statute, and was entitled to the grant of probate without further payment. The view taken in the Calcutta Court by adhering to the scale of fees in force at the date of application for probate, was in favour of the subject, but the Bombay High Court adopted the other construction holding that the law in force at the date of the grant was the law which must be applied in deciding this matter. The Calcutta High Court has held, in another case, that the imposition is to be viewed as Court-fee, and not as a duty or tax on grant of the probate—though the fee levied by the Court for its work done in connection with the issuing of the probate, is determined upon the value of the property.[22]

As regards APPLICATIONS FOR REVIEW OF A JUDGMENT, it was held by the Calcutta High Court, "that neither under the Court-Fees Act as originally framed in 1870 nor under the Court-Fees Act as amended in 1922, can a petitioner for review of judgment be called upon to pay Court-fee on the basis of the fee which would be payable on the plaint or memorandum of appeal if it were to be filed on the date of the application for review. The amount must be calculated on the basis of the fee leviable (which, in the normal course of events, is the fee actually levied) on the plaint or memorandum of appeal according to the law in force when the plaint or memorandum is filed in Court.[23]

This ruling refuses to follow an earlier decision of the Madras High Court,[24] which has been followed ever since by Madras Court.[25] This ruling discusses the four possible meanings to the words "*the fee leviable on the plaint or the memorandum of appeal*", and holds (1) that the legislature meant the fee which was the proper fee to be levied, and not the fee actually levied. (2) That the construction put upon the expression by the Calcutta Court is not a reasonable one, inasmuch as it would

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(20) *See* 106 I.C. 66=52 Bom. 61=1927 Bom. 643.

(21) 81 I.C. 751=1924 Cal. 987=39 C.L.J. 209.

(22) In the goods of *G. T. Williams*, 75 I.C. 466=1924 Cal. 115=50 Cal. 597.

(23) *Nand Lal* v. *Jogendra Chandra*, 82 I.C. 297 (301)=1924 Cal. 881 =39 C.L.J. 222=28 C.W.N. 403. Followed in *Parmeshar* v. *Bakhtawar*, 1933 All. 20.

(24) 7 M.H.C.R. Appendix, p. 1.

(25) *See* 50 Mad. 488=100 I.C. 72=1927 Mad. 360.

make the petitioner, whose application only relates to a small portion of the relief asked for in the plaint or memorandum of appeal, liable to pay the full stamp paid in the plaint or memorandum of appeal, and thus "make an application for review much more expensive than an appeal". (3) The applicant could not be made liable to pay for the relief sought for by any one else over which he has no control, and, consequently, (4) that the applicant should pay on the relief sought by himself, as if it was a plaint or memorandum of appeal by himself, on the date when the review application was put in, calculated under the Amended Act.[26]

The Madras High Court's view seems also to have found acceptance in Bombay—In re *Manohar Tambekar*.[27]

6. **SCHEME OF THE ACT.**—"The Court Fees Act of 1870, as amended by subsequent legislation, is divided into seven chapters which, as indicated by their headings, purport to deal with different subject-matters.[28] Chapter I is PRELIMINARY. It contains no Preamble, which is certainly a noticeable feature,[29] and, the definition clause does not give the exact meaning assigned by the legislature to several words and expressions, which have given rise to considerable uncertainty, and embarrassment, and some conflict of views. Chap. II deals with "FEES IN THE HIGH COURTS, AND IN THE COURT OF SMALL CAUSES AT THE PRESIDENCY TOWNS". This consists of three sections, namely, Ss. 3, 4 and 5. S. 3, relates to levy of fees in High Courts on their original side, and the levy of fees in Presidency Small Cause Courts. The section is not a charging section, but merely prescribes that these fees shall be collected in the manner provided by Chap. V of the Act.[30] S. 4 deals with fees on documents coming before the High Courts in the exercise of their appellate or revisional jurisdiction in cases coming from the Subordinate Courts, or in their extraordinary original jurisdiction.[31] This is a charging section, in respect of all documents, specified under Schs. I and II, to be received in the High Court in exercise of its extraordinary original civil or criminal, jurisdiction, or appellate jurisdiction, or its jurisdiction as a Court of reference or revision. A memorandum of appeal is a document within the meaning of this section.[32] Thus, if a memorandum of appeal is filed in the High Court, the fee leviable will have to be determined with respect to Schs. I and II. Memorandum of appeal is mentioned in Art. I,

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(26) *See* In re *Punya Nabako, supra*, per Wallace, J.

(27) 4 Bom. 26=2 Ind., Dec. (N.S.) 528.

(28) Per Miller, C.J., in 87 I.C. 137 (139)=4 Pat. 336=1925 Pat. 392=1925 P.H. C.C. 65:=6 Pat. L.T. 262 (F.B.).

(29) Per Mahmud, J., in 8 All. 202; and in 12 All. 129, (F.B.) at p. 164. *See* Para. 1, *ante*.

(30) Per Mullick, J., in 87 I.C. 137 (147), *supra*.

(31) *Ibid.*

(32) 12 All. 129 F.B.; *also see* 87 I.C. 137 (143), *supra*, per Jwala Prasad, J.

Sch. I, Arts. 11, 17, 20 and 21 of Sch. II. The Arts. 11, 17, 20 and 21 of the Second Schedule have prescribed fixed sums to be payable on memoranda of appeal filed in any Court, and no question of valuation arises for the purpose of determining the Court-fee payable in those cases. Art. I of Sch. I, is not happily worded, but it is understood that, S. 4 not having been excepted, a memorandum of appeal filed in the High Court will come under this Article; and, the amount of fee payable would depend upon "*the amount or value of the subject-matter in dispute*", as mentioned in Col. 2 of the Schedule.[33] In order to ascertain the fee payable upon a memorandum of appeal coming under the aforesaid Arts. 11, 17, 20 and 21 of Sch. II, the nature of the document has to be determined. If it is an appeal from a decree or an order having the force of a decree, Art. 11 would not apply, and the Court-fee payable will be upon "the amount or value of the subject-matter in dispute", under Art. 1 of Sch. I. Similarly, in order to apply Art. 17 of Sch. II, it will have to be ascertained as to whether the memorandum of appeal is with respect to suits enumerated therein. Likewise the nature of appeal will have to be ascertained in order to apply Arts. 20 and 21 of Sch. II. Therefore, two questions arise with respect to a document filed, exhibited or recorded in, or received, or furnished by a High Court, namely, (1) the necessity of paying a fee, and (2) the amount of fee payable.[34]

Under S. 5 it is the duty of the officer appointed in this behalf by the High Court to see whether and what fee is payable under Chap. II upon a document filed, exhibited, or recorded in, or received or furnished by the High Court. His duty is to see under what Articles or Schs. I and II, the aforesaid document falls. If it is a document with respect to which a fee is to be paid under the said Schedules, it is his duty to find out the amount of the fee leviable upon it.[35]

Section 4 of the Act is a prohibition against the use of improperly stamped documents, and in that sense may be said to make the fees on those documents payable in High Courts.[36] S. 6, which comes under Chap. III, *contains a similar prohibition in respect to the Subordinate Courts.*[37] Chap. III deals with "Fees in other Courts, and in Public Offices"; and, S. 6, is the charging section which declares that no plaint, or memorandum of appeal, shall be received unless in respect of it there be paid a fee of an amount not less than that indicated in Schs. I and II, as the proper fee for such document.[38] *The scheme for the taxation of plaints and memoranda of appeals* is as follows:—"Suits and memoranda of appeal are classified according to the subject-matter, or the subject-matter in dispute,

(33) 12 All. 129 F.B.; *also see* 87 I.C. 137 (143), *supra.*
(34) *Ibid.*, 87 I.C. 137 (144), *supra.*
(35) *Ibid.*, 87 I.C. 137 (144), *supra.*
(36) Per Miller, C.J., in 87 I.C. 137 (139), *supra.*
(37) *Ibid.*, 87 I.C. 137 (139), *supra.*
(38) Per Mullick, J., in 87 I.C. 137 (147), *supra.*

or the nature of the relief claimed. Schs. I and II endeavour to give a comprehensive classification of the various kinds of suits with reference to these heads of classification. *The Schedules* also provide that the proper fee payable on some documents shall vary according to the Court in which they are filed, and that in regard to others there shall be no such variance. Again, in Sch. II, it is declared that the plaints and appeals in the suits therein specified shall bear the fixed fees prescribed, while in Sch. I are specified various suits in which the plaints and appeals shall bear an *ad valorem* fee.[39] The procedure to be followed when a plaint or a memorandum of appeal is filed in a Court other than a Chartered High Court or a Presidency Small Cause Court, is as follows: "The Court will first of all decide into which of the various classes enumerated in Schs. I and II, the document falls. This has sometimes been called the *category of the suit*. The process involves the construction of the plaint and the determination of the real relief prayed for. It is essentially judicial, and requires the Court to be astute as to see that reliefs are not so cast as to secure an evasion of the Court-Fees Act. A familiar instance is when declarations are only asked when consequential relief is the real claim. The Court will then proceed to see whether the proper fee is a fixed fee under Sch. II, or an *ad valorem* fee under Sch. I. No question of valuation arises if the fee is a fixed fee; but if an *ad valorem* fee is leviable, then the Court will proceed to value the subject-matter, or the subject-matter in dispute, or fix the amount of the relief claimed according to rules for computation set out in Ss. 7 and 8 of the Act. If a local or further investigation is necessary, the Court may proceed under S. 9".[40] Ss. 9 and 10 provide machinery for ascertaining the value of land and houses, the subject-matter of a suit when the Court thinks that the value has been wrongly estimated to the detriment of the revenue.[41] This computation is the value referred to in S. 11 of Chap. III, and the Court's adjudication on a question relating thereto is final in respect of a plaint or memorandum of appeal under the first clause of S. 12.[42] "A decision on a question of category is not *final* within the meaning of Cl. (1) of S. 12, while a decision on a *question of valuation*, pure and simple, as defined above, is final as between the parties to the suit. The second clause of S. 12, however, gives a Court of appeal power to collect deficit Court-fees in respect of fees payable in Subordinate Courts, and it seems now settled that the High Court, as a Court of appeal, reference and revision, is competent to exercise this power in respect of all Courts subordinate to it".[43] Ss. 13, 14 and 15 deal with refund of fee paid or memorandum of appeal, on application for review of judgment, on reversal or modification of Court's former decision, on ground of mistake, respec-

(39) Per Mullick, J., in 87 I.C. 137 (147), *supra*.
(40) Per Mullick, J., in 87 I.C. 137 (148), *supra*.
(41) Per Miller, C.J., in 87 I.C. 137 F.B. at pp. 140, 141.
(42) Per Mullick, J., in 87 I.C. 137 (148), *supra*.
(43) *Ibid*.

tively. Ss. 13, 14 and 15 exhaust the provisions in the Act regarding the refund of Court-fees paid in the suit or in appeal, but they do not oust the inherent powers of Court, under S. 151, Civil Procedure Code, 1908, exercisable in cases of imperative necessity to remedy some manifest injustice. Chapter III contains three more sections, S. 17, relating to suits embracing two or more distinct subjects chargeable with aggregate fees, S. 18 dealing with written examinations of complainants, and S. 19, providing for "exemption of certain documents". This Chapter has been criticised "as a piece of patch-work legislation",[44] which "has been the subject of a multitude of decisions in the Courts", mostly due to its wording being in some respects "certainly unscientific and difficult to interpret", and its certain "obvious blunders" have had to be rectified by an Amending Act.[45] The Act has been repeatedly amended, but still its provisions are far from exhaustive, and with the exception of rules for valuation of land, house or garden, it prescribes no method of arriving at "the amount or value of the subject-matter of the suit".[46] It has been observed on the one hand, that "the Act has been amended piece-meal from time to time", and "the repeated amendments of the Act give rise to questions of considerable nicety, which are by no means free from difficulty";[47] and, on the other hand, it has been held that "*the amendments of the Court-Fees Act have not kept pace with the amendments of the Code of Civil Procedure*, 1908".[48]

Chapter III-A has been wedged in Chaps. III and IV of the Act, as originally framed and this Chap. III-A contains certain provisions 19-A to 19-K, headed, "PROBATES, LETTERS OF ADMINISTRATION, AND CERTIFICATES OF ADMINISTRATION". Chap. IV deals with rules and tables of "PROCESS-FEES", and is concerned with the number of peons in District and Subordinate Courts, in mofussil Small Cause Courts, and in revenue Courts". Chap. V deals with the MODE OF LEVYING FEES, by collecting stamps, impressed or adhesive, and provides for rules regarding supply, number, renewal and keeping accounts of stamps; and for stamping of documents inadvertently received, for amendments of documents and cancellation of stamp. Chap. VI is headed "MISCELLANEOUS", and provides for repayment of fees paid on applications to criminal Courts; the admission in criminal cases of documents for which proper fee has not been paid; the sale of stamps; power to reduce or remit fees, and lastly, the saving of fees to certain officers of High Courts.

As noticed already, Sch. I deals with *ad valorem fees*, and gives tables of rates of *ad valorem* fees leviable on the institu-

(44) Per Miller, C.J., in 87 I.C. 137 F.B. (141), *supra*.

(45) *Ibid.*, 87 I.C. 137 (141), *supra*.

(46) *See* Referring order in *Putta Kannappa* v. *Rudrabhatla*, 40 Mad. 1=39 I.C. 439 (444, 445).

(47) Per Mukerji, J., in 21 I.C. 502=18 C.L.J. 308=18 C.W.N. 121 (F.B.).

(48) Per Sulaiman, J., in *Chunni Lal* v. *Sheo Charan Lal*, 89 I.C. 122 (124, 125)=1925 All. 787.

tion of suits; and Sch. II provides fixed fees in certain other cases; and Sch. III gives Form of Valuation, with annexures A and B, as regards "valuation of the moveable and immoveable property of deceased, and "Schedule of Debts", etc.

7. PRINCIPLES OF CONSTRUCTION OF STATUTE.—(1) Defective drafting of the Act.—The drafting of the Act has been characterized as "unscientific", and "obscure"; and, its interpretation gives rise to considerable difficulty.[49] The Courts can, however, only deal with the Act as it stands, and it is for the legislature to amend or to remedy its existing defects.[50] Courts cannot aid the legislature's defective phrasing of the Act; they cannot add, and amend, and by construction make up the deficiencies which are left there.[1]

A *casus omissus* cannot be supplied by a Court of law[2]—nor can the Court alter the law or read into the statute words which it thinks should have been there.[3] It is undesirable to import into a section any expression which is not to be found there.[4]

(2) Duty of Court.—"The duty of a Court is not to draft laws so that they may be just or reasonable or consonant to some accepted principle.[5] "Its duty is TO EXPOUND THE LAWS AS THEY STAND, giving to all words used the meaning they have according to common usage, or, if defined, according to the meaning given therein in the Act in question, or in the interpretation Act."[6] The Judges are not responsible for Acts passed by the legislature, THEIR OFFICE IS JUS DICERE AND NOT JUS DARE, *viz.*, to interpret the law and not to make law or give law.[7] It is their duty to abide by the words of the statute, without attempting to reform it according to the supposed intention of the legislature,[8] If the law is clear, it is the duty of the Court to give effect to it without attempting to inquire into the reasons for the enactment;[9] and, uninfluenced by considerations of what the law may be else-

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(49) Per Miller, C.J., and Per Mullick, J., in 87 I.C. 137 (140), (147)=4 Pat. 336=1925 Pat. 392 (F.B.); *also see* Per Mukerji, J., in 21 I.C. 502 (F.B.) (Cal.).

(50) *Currimbhai* v. *Ahmedali*, 1933 Bom. 91 (92).

(1) *Raja of Mandasa* v. *Jagannayakulu*, 1932 Mad. 612 (F.B.) at p. 619; also see *Hardialshah* v. *Secretary of State*, 69 I.C. 428=3 Lah. 420=1923 Lah. 275.

(2) *Crawford* v. *Spooner*, 6 Moo.P.C. 1, folld. in 1928 Lah. 337=9 Lah. 689=113 I.C. 769.

(3) 39 I.C. 87 (All.) reld. in 123 I.C. 417 (419).

(4) Per Walsh, J., in 107 I.C. 674 (675); *also see* 124 I.C. 483 (484).

(5) Per Stone, J., in *Mercantile Bank* v. *Official Assignee*, 1933 Mad. 207 (210).

(6) *Ibid.*, 1933 Mad. 207 (210).

(7) Per Rupchand, A. J. C., *in Daily Gazette Press* v. *Karachi Municipality*, 127 I.C. 690 (697)=1930 Sind 287.

(8) 127 I.C. 690 (697)=1930 Sind 287, *supra*, citing *Hiramal* v. *Hazari Singh*, 78 I.C. 583=1925 Sind 49; and *Emperor* v. *Nur Mahomed*, 105 I.C. 433=1928 Sind 1 (F.B.).

(9) *Joti Prasad* v. *Amba Prasad*, 1933 All. 358 (362).

where,[10] and, whatever may be the opinion of the Court as to the justice of the enactment.[11] A Court of law has nothing to do with the reasonableness or unreasonableness of a provision of a statute;[12] nor with the question whether the legislature has committed an absurdity. If THE WORDS OF AN ACT ARE CLEAR, THEY MUST BE FOLLOWED. Even though they lead to manifest absurdity,[13] inconvenience,[14] or even injustice.[15] As remarked by Rankin, C.J., in construing Statutes "the duty of the Court is not to put a construction which seems to the Court to be the best in the sense that it will work out with the most justice or with the least inconvenience, but to put a construction which seems to the Court *to be the best in the sense that it is nearest to the language of the legislature*".[16] The rule is well established, that "when once the meaning is plain, it is not the province of a Court to scan its wisdom or its policy. Its duty is not to make the law reasonable, but to expound it as it stands, according to the real sense of the words".[17] Similarly, when the Statute is clear, it cannot be qualified or neutralized by indications of intention gathered from previous legislation on the same subject.[18]

(3) Equitable considerations.—As noticed above, a clear provision of Statute has to be followed and given effect to regardless of all equitable considerations, and irrespective of any opinion of the Court as to the justice of the enactment.[19] A clear provision of the law cannot be displaced by a more equitable principle, however, wholesome it may be.[20] WHERE THE LANGUAGE IS PLAIN,

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(10) *Venkatachala* v. *Emperor*, 1932 Mad. 21=136 I.C. 332.

(11) *Chunnamal* v. *Commissioner of Income-tax*, 131 I.C. 193=1931 Lah. 320 (F.B.).

(12) Per Lord Atkinson in *Vacher and Sons* v. *London Society*, (1913) A.C. 107=29 L.T. 73.

(13) *Muhammad Hyat* v. *Commissioner of Income-tax*, 1931 Lah. 87 (92)=12 Lah. 129=131 I.C.81; citing *Queen* v. *the Judge of the City of London Court*, (1892) 1 Q.B. 273; *also see* and cf. *Moideen Pichai* v. *Tinnevelly Mills Co.*, 111 I.C. 225=1928 Mad. 571; and *Subramania Aiyar* v. *Swaminatha*, 1928 Mad. 746.

(14) *Public Prosecutor* v. *Muqanab*, 141 I.C. 881 (883)=1933 Pesh. 3, at p. 5; also see *Anand Prakash* v. *Naraindas*, 135 I.C. 119 (130) ("the argument of convenience is not very often a sound argument when the language of law is clear beyond doubt."

(15) *Ibid.*, 1933 Pesh. 2 at p. 5=141 I.C. 881 (883); also see *Ashutosh* v. *Sudhan Mukherji*, 133 I.C. 587 (589).

(16) *Mukerjea* v. *Karnani Industrial Bank*, 130 I.C. 283 (286, 287) =1930 Cal. 770=58 Cal. 521.

(17) Maxwell, (on Interpretation of Statutes, 7th Edn., p. 4; *Muhammad Hyat* v. *Commissioner of Income-tax*, 1931 Lah. 87 (F.B.) at p. 92=12 Lah. 129=131 I.C. 81; *Prithvidass* v. *Emperor*, 1931 Lah. 283 (F.B.) at p. 287=132 I.C. 889=12 Lah. 345; and 1933 Pesh. 3 at p. 5, *supra*.

(18) *Administrator-General* v. *Premlal Mullick*, (1895) 22 Cal. 788= 22 I.C. 107 (P.C.), cited in *Avaru* v. *Asibai*, 1932 Mad. 9 (13).

(19) 131 I.C. 193=1931 Lah. 320 (2) F.B., f-n. (11), *supra*.

(20) *Nannu Mal* v. *Ramchander*, per Sen, J., 132 I.C. 401=1931 All. 277 at p. 291=53 All. 334 (F.B.).

AND ADMITS OF ONLY ONE MEANING, THE TASK OF INTERPRETATION CAN HARDLY BE SAID TO ARISE.[21] The maxim applies "*Absoluta Scutentia expositore non indiget*". It is not allowable to interpret what has no need of interpretation.[22] Where the wording of the section is clear, it is futile to waste time to consider what the POLICY OF THE LEGISLATURE is on which that section is based.[23] It is for the legislature and not for the Courts to consider whether the words employed in framing an Act will give effect to the object and policy which the Statute may have in view.[24]

Likewise, THE COURT IS NOT AT LIBERTY TO VARY THE CONSTRUCTION OF A PROVISION OF THE LAW WITH REFERENCE TO ANY REAL OR SUPPOSED HARDSHIP; and where the words are plain, it matters not what the consequences may be.[25] It was observed by Edge, C.J., in *Salkan Rai* v. *Gobind Nath*, that "we cannot allow any question of hardship to influence us in applying the principles of construction to the Acts of the legislature where the wording of those Acts is plain and unambiguous.[26] In *Parington* v. *Attorney-General*,[27] Lord Cairns said: "If the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand if the Crown is seeking to recover the tax, but the subject is within the letters of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be." Similarly, in *Attorney-General* v. *Earl of Selbourne*,[28] Collins, M.P., observed as follows: "Therefore, the Crown fails if the case is not brought within the words of the Statute interpreted according to their natural meaning, and if there is a case which is not covered by the Statute so interpreted, that can only be cured by legislation, and not by an attempt to construe the Statute benevolently in favour of the Crown."

(4) Escape and Evasion.—It must be borne in mind that the "Court-Fees ACT WAS PASSED NOT TO ARM A LITIGANT WITH A WEAPON OF TECHNICALITY AGAINST HIS OPPONENT but to secure revenue for the benefit of the State;"[29] and, though its provisions

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(21) Maxwell, on Interpretation of Statutes, 7th Edn., p. 4; *also see* 1933 Pesh. 3 at p. 5; and *Piarasingh* v. *Mula Mal*, 4 Lah. 323=1923 Lah. 655=75 I.C. 915.

(22) 1933 Pesh. 3 at p. 5, *supra*.

(23) *Tong Hock Hin* v. *Eng Hoe Seng*, 1928 Rang. 327=6 Rang. 533; *also see* f.-n. (17) at p. 15.

(24) 11 Bom. 1 at p. 4, refd. in *Noksing* v. *Bholusing*, 123 I.C. 417 (419)=1930 Nag. 73.

(25) 14 Mad. 480 (484); 22 I.C. 503 (506)=111 P.R. 1913, (F.B.); *also see* Maxwell, 7th Edn., p. 5; and 1933 Pesh. 3 at p. 5=141 I.C. 881 (883).

(26) 12 All. 129 (F.B.).

(27) (1869) 4 H.L. 100 (122); 38 L.J. Ex. 205; 21 L.T. 370; also see *Deputy Commissioner* v. *Jagadish Chandra*, 62 I.C. 513 (Pat.).

(28) (1902) 1 K.B. 388 (396); 71 L.J. K.B. 289; 18 T.L.R. 111.

(29) (1918) P.C. 188=50 I.C. 280=43 Bom. 507 (P.C.); *also see* 130 I.C. 369 (374)=1930 Cal. 787; (*Shiban* v. *Abdul Alim Abed*).

are not to be so construed as to furnish a chance of escape and a means of evasion,[30] yet it is open to parties to avail themselves of any camouflage that the law allows, and does not forbid.[31]

(5) Exceptions.—According to the ordinary rules of interpretation, exceptions should not be enlarged in their scope more than what their wordings properly justify.[32] AN EXEMPTION MUST BE STRICTLY CONSTRUED IN FAVOUR OF THE STATE.[33]

(6) Fiscal Enactments.—The Court-Fees Act is a taxing and fiscal enactment, and as their Lordships of the Privy Council observed in *Rachappa* v. *Saidappa*,[34] "it is a rule of construction peculiar to FISCAL ENACTMENTS that they MUST BE VERY STRICTLY CONSTRUED so as not to impose an unnecessarily heavy burden on the subject". Such an Act which imposes pecuniary burdens,[35] encroaches or qualifies the right of the subject,[36] or which renders the public liable to pay charges,[37] must be precise,[38] clear and unambiguous.[39] The subject is not to be taxed unless the language of the Statute clearly imposes the obligation, and in a case of reasonable doubt the construction most beneficial to the subject is to be adopted.[40] When the State requires the subject to pay a tax of any kind, that must be done by definite enactment strictly interpreted.[41] Unless and until the language used in a Statute makes the meaning entirely insensible, EVERY WORD USED

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(30) Per Mookerjee, J., in *Raj Rajeswari* v. *Gati Krishna*, 82 I.C. 292 (294)=1924 Cal. 953=39 C.L.J. 217 (223).

(31) *Pathuma Umma* v. *Aliyammakkanath*, 110 I.C. 752=1928 Mad. 929.

(32) *Vijiaraghava* v. *Ponnammal*, 1932 Mad. 120 (123).

(33) 29 Bom. 203=6 Bom. L.R. 844.

(34) 1918 P.C. 188=50 I.C. 280=43 Bom. 507; also see *Sardar Dial Singh* v. *Beli Ram*, 51 P.R. 1897 (F.B.); also see *Nobsingh* v. *Bholusingh*, 1930 Nag. 73 (76)=123 I.C. 417 (419).

(35) 10 Cal. 274 (282); 29 Bom. 203; 65 I.C. 553; 78 I.C. 438=1925 Sind 67; 81 I.C. 751=39 C.L.J. 209; *Municipal Council* v. *Madras, Etc., Co.*, 121 I.C. 839; 123 I.C. 417=1930 Nag. 73; *Shihan* v. *Abdul Alim*, 130 I.C. 369 (374)=1930 Cal. 787=58 Cal. 474; *Gopalswami* v. *Secretary of State*, 132 I.C. 130=1931 Mad. 525; *Hirachand* v. *Emperor*, 132 I.C. 694=134 I.C. 850=1931 Nag. 156 (F.B.); 134 I.C. 1137 (2) =1931 Mad. 683=35 Mad. 26; 138 I.C. 673 (Sind); (*the Commissioner of Income-tax* v. *Sind Railway Co.*).

(36) 8 All. 282; 65 I.C. 553=1922 U.B. 14=4 U.B.R. 1921.

(37) Per Walsh, J., in 36 I.C. 877 (All.).

(38) 17 Bom. 56; 8 Cal. 259; 22 I.C. 503 (F.B.)=111 P.R. 1913 F.B.

(39) 10 Cal. 274 (282); 9 Mad. 146 F.B.; 111 P.R. 1913 (F.B.)= 22 I.C. 503; 76 I.C. 82=1924 Nag. 24; 123 I.C. 417=1930 Nag. 173; 1932 Mad. 593=139 I.C. 418.

(40) *Kalicharn Roy* v. *Kesho Prasad*, 51 I.C. 16 (Pat.); *Dhan Kumari* v. *Municipal Committee, Saugor*, 134 I.C. 850=1931 Nag. 156 (F.B.); also see *Emperor* v. *Himanchalsingh*, 123 I.C. 673=1930 All. 265; and see f.-n. (46); and *the Commissioner of Income-tax* v. *Sind Light Railway Co.*, 138 I.C. 673 (Sind).

(41) *Ramaswami* v. *Rangaswami*, 134 I.C. 1137 (2)=1931 Mad. 683 =61 M.L.J. 933.

MUST BE GIVEN ITS PLAIN GRAMMATICAL MEANING,[42] and this must not be stretched by judicial interpretation.[43] Either the enactment, as worded, applies, or does not apply; and, it is neither necessary, nor permissible to examine and discuss the principles underlying a Statute, unless the words of the Statute are vague and ambiguous, and unless the principle is helpful in clearing the ambiguity.[44] In doubtful cases, where the meaning of the legislature is not clear, the Statute has to be construed in a manner which "bears least heavily on the subject";[45] and, the benefit of the doubt must be given in favour of the subject,[46] by interpreting the charging provisions "in a liberal and generous spirit",[47] but, "with due regard to the language used in the enactment".[48] The rule established on the authorities is that "A SUBJECT IS NOT TO BE MADE LIABLE EXCEPT UPON THE PLAIN WORDS OF THE ENACTMENT.[49] The Courts have no right to make a search for principles, and to legislate thereby in interpreting fiscal Statutes.[50] It should be remembered that an enactment imposing a burden requires a strict construction in favour of the subject, but an exemption must be strictly construed in favour of the State".[50]

(7) Harmonious Construction.—It is a general principle of interpretation that a Statute ought to be so construed that if it can be prevented no clause, sentence, or word shall be superfluous, void, or insignificant.[1] At the same time a construction which

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(42) Lachhman Prosad Babu Ram, *In the matter of*, 126 I.C. 801 (F.B.) at p. 804=1930 All. 49; *also see* 7 Cal. 127.

(43) *Commissioner of Income-tax* v. *Ellis Reid*, 133 I.C. 261 (264)= 55 Bom. 312=1931 Bom. 333.

(44) 1931 All. 162=53 All. 239=135 I.C. 119 (F.B.).

(45) 4 Bom. 515; 17 Bom. 56; *also see* f.-n. (39) above.

(46) 5 Bom. 400 (401); 12 Bom. 98; 21 I.C. 502=18 C.L.J. 308; 24 I.C. 793 (F.B.); 27 I.C. 731=37 All. 159 (F.B.); 22 I.C. 503 =111 P.R. 1913 (F.B.); 24 I.C. 823 (L.B.); 43 I.C. 383= 9 P.R. 1918; 65 I.C. 553 (Bur.); 8 Lah. 730=110 I.C. 264=1928 Lah. 113; 108 I.C. 524=1928 Lah. 219; 76 I.C. 82=1924 Nag. 24; 76 I.C. 721 (S.B.) Mad.; 78 I.C. 572=1924 Nag. 153; 132 I.C. 225=1931 Oudh 99; 132 I.C. 429=1931 All. 401; 1932 All. 526 (527)=1932 Cal. 346; 1932 Mad. 325, and 474; 1933 All. 321 (F.B.); 488 (b).

(47) *Beli Ram* v. *Ishar Das*, 8 Lah. 730=1928 Lah. 113; 105 I.C. 881=1927 Mad. 1002=110 I.C. 264; 1933 All. 77 (82); In re *Jai Dayal*, (construction leaving in favour of the subject).

(48) *Beli Ram* v. *Ishardas*, 110 I.C. 264 (266) Lah.; *also see* 126 I.C. 801, *supra;* and 8 O.W.N. 1267.

(49) *Noksingh* v. *Bholusingh*, 123 I.C. 417 (419) and 9 Mad. 146 F.B.; also see *Thadens Nabapiet* v. *Secretary of State*, 81 I.C. 751=39 C.L.J. 209.

(50) *Sheo Ram Singh* v. *Barkansingh*, 134 I.C. 597 (598)=1931 Oudh 366; 29 Bom. 203=6 Bom. L.R. 844; *also see* f-ns. (43) and (46), above.

(1) *Vasanbat* v. *Radlubar*, 108 I.C. 657=1928 Sind 118; citing *R.* v. *Bishop of Oxford*, (1879) 4 Q.B.D. 245 and *Hough* v. *Windue*, (1884) 12 Q.B.D. 224 (229, 232); also see *Bankey Beharilal* v. *Abdul Rehman*, 135 I.C. 695 (697).

would lead to an absurdity,[2] or to a manifestly unjust result,[3] or to an anomaly[4] is to be avoided, and can be given effect to only, if the words of the Statute are clear and unambiguous and admit of no other interpretation. It is a sound rule of interpretation that the various provisions of a Statute should, if possible, be so construed as to give a consistent and harmonious result,[5] and not result in any repugnancy, or anomaly, which there is no reason to suppose was intended.[6] The ordinary rule is to adhere to the literal sense of the words used, and to the grammatical construction, unless this is at variance with THE INTENTION OF THE LEGISLATURE which MAY BE COLLECTED FROM THE WHOLE STATUTE.[7] It is a general principle of interpretation that effect should be given to every part of a statute[8] The mode of interpreting Court-Fees Act, is, likewise, by reference to all the sections taken as a whole, and not to consider individual sections merely.[9] The Act has been repeatedly amended, and it is possible that in inserting a new section, some other portion of the Act "was not carefully considered," or, the effect of an amendment upon questions likely to arise was not specifically realised by the framers of the amending provisions.[9] Lord Wensleydale said in *Becke* v. *Smith*:[10] It is a very useful rule, in the construction of a statute, to adhere to the ordinary meaning of words used, and to the grammatical construction, *unless this is at variance with the intention of the Legislature to be collected from the statute itself*". Similarly, Lord Blackburn observed in *Wear River Commissioner* v. *Adamson*,[11] "that the Court must not deviate from the literal sense of the words without sufficient reason, or more than is justified, yet not adhering slavishly to them when to do so would obviously defeat the *intention* which *may be collected from the whole statute.*" The same principle has been stated by Maxwell, in his learned work on the Interpretation of Statutes.[12] "The true principle of construing a statute is that

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(2) *Mohideen* v. *Tinnevelly Mills*, 111 I.C. 225 (228)=1928 Mad. 571 (575); *Subramania* v. *Swaminatha*, 1928 Mad. 746 (755); *Kundan Lal* v. *Emperor*, 131 I.C. 625=12 Lah. 604=1931 Lah. 353.

(3) Per Erle, C .J., in *Smurthwaite* v. *Wilkins*, (1862) 11 C.B. (N.S.) 842, 848; 142 E.R. 1026; 132 R.R. 773.

(4) *Mohideen* v. *Tinnevelly Mills Co., Ltd.*, 111 I.C. 225 (228)= 1928 Mad. 571 (575); also see *Subramania* v. *Swaminatha*, 1928 Mad. 746 (755); *Dialsingh* v. *Gurudwara*, 9 Lah. 649=110 I.C. 164 (167)=1928 Lah. 325; *cf.* 1932 Mad. 369 (F.B.).

(5) *Mariyayee* v. *Ponnuswami*, [1932 Mad. 336 (342)].

(6) *Giribala Dasi* v. *Mader Gazi*, 1932 Cal. 699.

(7) *Emperor* v. *Munshi*, 1932 Bom. 427 (428)=138 I.C. 703.

(8) *Shib Charan* v. *Emperor*, 133 I.C. 140=1931 All. 49=53 All. 233; *Jadunath* v. *Biskeshar Baksh Singh*, 130 I.C. 306 (309) P.C.=1931 P.C. 24=8 O.W.N. 258.

(9) 21 I.C. 502 (507)=18 O.W.N. 121=18 C.L.J. 308.

(10) (1836) 6 L.J. Ex. 54; 46 R.R. 567.

(11) (1877) 2 A.C. 743 (765); 47 L.J. Q.B. 193 (203).

(12) Maxwell, on Interpretation, 7th Edn., pp. 2-3; 19-20.

we ought to give to an Act of the Legislature the plain, fair, literal meaning of its words where we do not see from its scope that such meaning would be inconsistent or would lead to manifold injustice and that the true meaning of any provision in an Act will have to be gathered by comparing it with the other parts of the same Act, and that every clause of the Act should be construed with REFERENCE TO THE CONTEXT, so far as possible, so as to make a consistent enactment of the whole Act relating to the subject-matter.''[13]

(8) **Intention of the Legislature.**--It has been noted above, that if the words of an Act of the Legislature are capable grammatically of two meanings, THE COURT MUST LOOK TO THE WHOLE OF THE ACT in order to determine which meaning best gives effect to the intention of the Legislature.[14] In determining the intention of the Legislature, the primary question is not what may be supposed to have been intended, but what has been said.[15] It is an elementary rule of construction of statutes that the Provisions of AN ENACTMENT MUST BE CONSTRUED ACCORDING TO ITS PLAIN WORDING and nothing can be imported into it merely on the basis of any speculation as to the intention of the Legislature.[16] The language used, by a statute, is the best declaration of the intention of the Legislature and is conclusive of it. The legislature must be intended to mean what it has plainly expressed.[17] If the words go beyond what was the probable intention, effect must nevertheless be given to them.[18] It may sometimes be difficult to ascertain what the Legislature exactly meant, but the Court must determine what its language means.[19] Where the words used by the Legislature are ambiguous, it is open to a Court in order to find out the intention of the Legislature to examine what was the previous state of the law, and whether the Legislature intended to make any change in the law.[20] At the same time, in interpreting a statute, it is the duty of the Courts of Justice to try to get at the real intention of the legislature by considering the whole scope of the Statute in question.[21] The words of the Statute, when there is doubt about their meaning, are to be understood in the sense in which they

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(13) *Someshwar* v. *Manilal*, 137 I.C. 603 (2) (604, 605) (Bom.)=1932 Bom. 210 (211); also see *Jotindra Nath* v. *Bengal Government*, 1932 Cal. 753 at p. 757 and *Aghore Chandra* v. *Rajnandani*, 1933 Cal. 283 (284). (The intention of the legislature, may be found by comparison with other provisions.)

(14) *Emperor* v. *Munshi*, 138 I.C. 703=1932 Bom. 427 (428); *also see* f.-ns. (10) to (13).

(15) *Brophy* v. *Attorney-General*, 1895 A.C. 202.

(16) *Des Raj* v. *Emperor*, 126 I.C. 177=1930 Lah. 781; also see *Piara Singh* v. *Mula Mal*, 4 Lah. 323=75 I.C. 915=1923 Lah. 655.

(17) 1933 Pesh. 3 at p. 5; *also see* f.-ns. (13) to (18) at p. 15, *ante*.

(18) *Ibid.*, Maxwell, 7th Edn., p. 4.

(19) *Bejoy Kumar Addy* v. *Corporation of Caloutta*, 1933 Cal. 322.

(20) *Mahadevram* v. *Mohan Vikram*, 1933, Pat. 435 (S.B.) at p. 437.

(21) *Vithoba* v. *Govindarao*, 1933 Nag. 193 (F.B.) at pp. 197, 198; *also see* f-ns. (11) to (14), *supra*.

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best harmonize with the subject of the enactment and the object which the legislature has in view.[22] The Court's duty is not to supply a lacuna or defect: if two constructions are possible the one more reasonable, and consistent with the obvious purposes of the Act should be preferred.[23]

(9) Literal Sense.—From the above discussion, the ordinary rule of construction appears to be to interpret Acts as one finds them, *viz.*, to read them literally, "unless there is something in the context or in the subject to prevent that reading."[24] Words have, ordinarily, to be taken in their literal sense and according to their grammatical construction,[25] if not[26] inconsistent with the rest of the Statute, unless there is any clear indication to the contrary.[27] "When the words of a Statute admit of but one meaning, the Court is not at liberty to speculate on the intention of the legislature, and to construe them according to its notions of what ought to be enacted."[28] "The business of the interpreter is not to improve the Statute, it is to expound it"; and "to give a construction contrary to, or different from that which the words import, is not to interpret law but to make it",[29] words should not be added to the language of a Statute.[30] Nothing should be added, or subtracted.[31] In coming to a determination as to the meaning of a particular word in a particular Act, it is permissible to consider two points, *viz.*: (1) THE EXTERNAL EVIDENCE derived from extraneous circumstances SUCH AS PREVIOUS LEGISLATION AND DECIDED CASES; (2) THE INTERNAL EVIDENCE DERIVED FROM THE ACT ITSELF.[32] But the mere fact that the literal meaning of the words used in a Statute leads to an injustice,[33] or hardship[34] is no ground for disregarding the meaning. When the language of a Statute is clear and unambiguous, it must be given effect to apart

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(22) 1933 Nag. 193 (F.B.), p. 197, *supra*; also see Para. 7, *ante*.

(23) *See* Para. 7, *ante;* and *Mudaliar* v. *Maymo Municipal Committee*, 1933 Rang. 68; following *Brown* v. *National Provident Institution*, (1921) 2 A.C. 222.

(24) Per Jessel, M.R., in *Taylor* v. *Corporation of Oldham*, (1877) 4 Ch. D. 395 at p. 405; cited in 97 I.C. 455 F.B. (461)=1926 All. 617.

(25) *See* f.-ns. (10) and (11); *also see* and cf. *Mercantile Bank* v. *Official Assignee*, 1933 Mad. 207 (210); and *see* 133 I.C. 301, (*Ramesha Dayal* v. *Om Parkash*).

(26) *See* Para. 7, *ante*: Maxwell Edn. 5th, p. 4, cited in 1933 Mad. 207 (210).

(27) 131 I.C. 234 (Lah.)=1931 Lah. 399.

(28) Per Bhide, J., in 1933 Lah. 492 (493), (*Mt. Surji* v. *Sho Ram*); *also see* Para. 8, *ante*, f.-ns. (5) to (10) at pp. 14 and 15, above and 1933 Pesh. 69 (70).

(29) *Ibid.*, also see Para. *ante*, f.-ns. (5) to (10).

(30) *Ram Sarup* v. *Joti*, 1933 All. 321 F.B.

(31) *Vithoba* v. *Govindrao*, 1933 Nag. 193 (F.B.).

(32) *Henrietta Muir Edwards* v. *Attorney-General*, 1930 P.C. 120= 126 I.C. 88.

(33) *Vacher's and Sons* v. *London Society of Compositors*, (1913) A.C. 107 (113, 118, 121); cited in 133 I.C. 587 at p. 589=1931 Cal. 688= 58 Cal. 510, (*Ashutosh* v. *Mukerji*); *also see* f.-n. (11) at p. 15.

(34) *See* Para. 3 above, f.-ns. (25) to (28).

from considerations of possible absurdity,[35] inconvenience or hardship.[36] The Court should interpret an enactment as it stands, and not in the light of any *anomaly* to which its wording may give rise.[37] However, it may be noted that "a reasonable construction should, if possible, prevail, and it must not be assumed that legislature foresees every result which may accrue from the use of a particular word.[38] Sense should be made out of Statute, and expressions should not be regarded as meaningless.[39] When the meaning of a Statute is doubtful, regard is to be had not to a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject of the enactment, or in the occasion on which they are used, and the object which the legislature had in view.[40] "Where one finds words included in one section and excluded in another, one must assume either carelessness or intention; and, unless the latter results in an impossible position THE LEGISLATURE MUST BE ASSUMED TO BE USING ITS LANGUAGE INTENTIONALLY."[41] Consequently, a section in an Act is *prima facie* to be interpreted according to the plain meaning of the words,[42] but under certain circumstances it is permissible to supply the omitted words and expressions due to unskilful draftsmanship,[43] and the Court can ignore presence of certain words in Statute if such words make Statute meaningless.[44]

A word occurring more than once in the same Act must be given the same meaning throughout the Act, unless the context shows that the legislature used the word in different senses.[45]

(10) Marginal notes and Headings, etc.—(*a*) The marginal notes of an Act must not be referred to for the purpose of either limiting or extending the words of the Act itself.[46] It has been

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(35) Per Stone, J., in *Mercantile Bank* v. *Official Assignee*, 1933 Mad. 207 (210); *also see* f.-n. (13) at p. 15, *ante*.

(36) *Basheshar Das* v. *Diwan Chand*, 1933 Lah. 615 (617); also see *Nannu Mal* v. *Ram Chandra*, 1931 All. 277 F.B. at p. 291; *also see* f.-ns. (14) and (15) at p. 15.

(37) *Ponnuswami* v. *Emperor*, 1932 Mad. 369 (F.B.).

(38) Per Rangnekar, J., in 1932 Bom. 71 (75) (F.B.); *also see* Para. 7, *ante* and *see* 35 C.W.N. 705.

(39) 1933 All. 221 (F.B.).

(40) *Vithoba* v. *Gobindrao*, 1933 Nag. 193 (197) F.B.

(41) Per Stone, J., in *Mercantile Bank* v. *Official Assignee*, 1933 Mad. 207 (210).

(42) *Pramatha Chandra* v. *Bhagwandas*, (1932) 136 I.C. 529 (533) (Cal.).

(43) In re *Pre-Audience of Advocate-General*, 1932 Bom. 71 (75); and *Ram Bharose* v. *Gangasingh*, 1931 All. 727 (F.B.) at p. 732.

(44) *Pabluwal* v. *Naraindas*, 1933 Sind 151 (2) (F.B.); citing In re *Ettridge*, (1909) 2 K.B. 24.

(45) *Rameshwar Prasad* v. *Emperor*, 134 I.C. 854=1931 Nag. 177.

(46) *Saldanha* v. *Saldanha*, 124 I.C. 776 at p. 785=54 Bom. 288=1930 Bom. 105; also see *The Lahore Bank* v. *Kidarnath*, 31 I.C. 746=36 P.R. 1916, "cannot be relied upon in clearing up the ambiguity in the text of the written law".

held by the Privy Council, that a marginal note cannot be referred to in construing the provisions of a section,[47] and this was followed in the Madras High Court, in re *Natesa Mudaliar*,[47a] and in a recent Bombay case by Wadia, J.[48] But a Full Bench of the Allahabad High Court in *Ram Sarandas* v. *Bhagwat Prasad*[49] has held that there can be no objection to refer to marginal notes for the purpose of construing or interpreting the section of an Act, *if they are inserted by or under the authority of, or assented to by, the legislature*: and, this view derives support from the observations in Maxwell on the interpretation of statutes,[50] *viz.*: that "as regards marginal notes the rule regarding their rejection for the purposes of interpretation is now of imperfect obligation." Collins, M. R. is reported to have said in *Bushell* v. *Hammond*.[1] that, "the side-note also, although it FORMS NO PART OF THE SECTION, is of some assistance, inasmuch as it SHOWS THE DRIFT OF THE SECTION:" and this view has been accepted in the recent Full Bench case before the Bombay High Court.[2]

(*b*) As regards HEADINGS IN THE BODY OF AN ACT to groupings of certain sections, it has been held in several cases that the headings prefixed to sections or sets of sections may be used for the purpose of interpreting the meaning, scope and intention of statutes. Baron Channel observed in *Eastern Counties, etc., Companies* v. *Marriage*[3] that "these . . . headings are not to be treated as if they were marginal notes, or were introduced into the Act merely for the purpose of classifying the enactments. They constitute *an important part of the Act itself*": and "they may be read, not only as explaining the sections which immediately follow them as a preamble to a statute may be looked to, to explain these enactments, but as affording a better key to the constructions of the sections which follow than might be offered by a mere preamble."[4] But, in *Abdul Rahim* v. *Municipal Commissioners of Bombay*, Lord Sumner observed that the headings to a group of sections "cannot be pressed into a constructive limitation upon the

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(47) *Thakurain Balraj Kunwar* v. *Jagatpa Singh*, (1904) 26 All. 393 =31 I.A. 132 (P.C.).

(47a) 50 Mad. 733=51 M.L.J. 704. See also *Kesava Chetty* v. *Secretary of State for India*, 42 Mad. 451 (453).

(48) *Dhangibboy Bomanji* v. *Gumpa Khandu*, 1933 Bom. 338 (339); *also see* 99 I.C. 324=1927 Mad. 156—("not a legitimate canon of interpretation").

(49) 113 I.C. 442=51 All. 411=1929 All. 53 (F.B.).

(50) Maxwell Edn., 7 at p. 37.

(1) (1904) 73 L.J. K.B. 1005=2 K.B. 563=91 L.T. 1.

(2) *Emperor* v. *Ismail Sayadsaheb*, 1933 Bom. 417 F.B. at p. 421.

(3) (1860) 11 E.R. 639; 9 H.L.C. 32 (41); 131 R.R. 17.

(4) See *Janki Singh* v. *Jagannath Das*, 44 I.C. 94 F.B. at p. 105—per Jwala Prasad, J., and at p. 97, per Chapman, J., "A heading may be used with considerable freedom to extend the meaning of a section which follows it." *Cf.* at p. 101—per Mullick, J.: "The words of the heading should not be allowed to affect the construction of the section." *Cf.* at p. 105—per Jwala Prasad—"The intention of the legislature can well be gathered by the express words in the heading of the chapter."

exercise of the powers given by the express words of the Act."[5] Similarly, in an Allahabad Full Bench case,[6] Sulaiman, O.C.J., observed that "no doubt headings in the body of an Act are of some help in clearing up obscurities when there is an ambiguity, but they cannot control the provisions of the sections when they are unequivocal and clear. *The headings are like preambles* which supply a key to the mind of the legislature, *but do not control the substantive sections of the enactment.*" This proposition, that the mere heading of a chapter is to be dealt with as though it were a preamble but that it "cannot be used to cut down the clear words of the sections which are contained in the chapter," was applied to the Court Fees Act, with reference to an interpretation of S. 8 of the Act.[7] The view has also been accepted in Bombay that the headings prefixed to sections or sets of sections may be regarded as preambles to those sections, but not so as either to restrict or extend the enacting part, when the language and the object and scope of the Act are not open to doubt.[8]

(*c*) **The Proviso**, attached to a section, is a part of the section, though it is subordinate to the main clause,[9] and, unlike an exception, a proviso to a clause should be taken in connection with the general language of the previous portion of the clause.[10] It was observed by Abdur Rabim, O. C. J. in the Madras case, that "in ordinary legal parlance a proviso is to be distinguished from the enactment, to which it is generally appended either for the purpose of explaining what particular matters are not within the meaning of the enactment, or for providing exceptions and qualifications to the enactment or for other similar purposes," and "the general rule" was stated to be, "that what is contained in the proviso is not to be imported by implication into the clause". A proviso cannot extend the substantive provision.[11] It was held by a Full Bench of the Madras High Court,[12] "that a proviso should not by mere implication withdraw any part of

(5) Per Lord Sumner, in 48 I.C. 63 (P.C.) at p. 68=1918 P.C. 20.

(6) *Durga Thathera* v. *Narain Thathera*,—Per Sulaiman (O.C.J.), 1931 All. 597 (599)=136 I.C. 274 (276). Cf. *Chunilal* v. *Sheocharan*, 89 I.C. 122 at p. 124=47 All. 756=1925 All. 787—per Sulaiman, J., (the headings in Court-Fees Act to be ignored in interpreting the substantive sections).

(7) In re *Ananda Lal*, (1932) 137 I.C. 469 (471)=1932 Cal. 346 (348). Refer. and *cf.* 1933 Cal. 699 (700).

(8) Per Beaumont, C.J., in *Official Assignee* v. *Chimniram*, 1933 Bom. 51 at pp. 57, 58, citing Maxwell, 7th Edn., pp. 39, 44; also see *Emperor* v. *Ismail Sayad Sahib*, 1933 Bom. 417 (420); citing *Hammersmith, Etc., Ry. Co.* v. *Brand*, (1868-69) 4 H.L. 171, "that the headings of different portions of a Statute can be referred to determine the sense of any doubtful expression in a section arranged under any particular heading."

(9) *Mrs. Annie Besant* v. *Government of Madras*, 39 Mad. 1085=37 I.C. 525=(1916) 2 M.W.N. 385.

(10) *Maha Prasad* v. *Ramani Mohan*, 25 I.C. 451=1914 P.C. 140 (P.C.).

(11) *Ramchander* v. *Gowrie Nath*, 53 Cal. 492=97 I.C. 376 (379).

(12) *Commissioner of Income-tax* v. *Suppan Chettiar*, 123 I.C. 801 (804); citing *West Derby Union* v. *Metropolitan Life Assurance Society*, (1897) A.C. 647; 66 L.J. Ch. 726.

what the main provision has given.'' The Calcutta High Court has taken a similar view, that the operative effect of any enactment cannot be altered because of provisions to be found in any proviso.[13] A proviso may be used as a guide in the choice of an alternative interpretation of the section, or to its true scope, but not so as to add something which is not to be found in the enactment itself.[14] ''It is a rule of law that A PROVISO SHOULD RECEIVE A STRICT CONSTRUCTION. It is not open to the Court to add words to a proviso with a view to enlarge the scope of the proviso . . . reasonably conveyed by the words used therein.''[15]

(*d*) There is authority, in English cases, that PUNCTUATION cannot be taken note of in considering a statute;[16] but it was doubted if such a rule would be equally applicable in the construction of statutes in this country.[17] In *Lewis Pugh* v. *Ashutosh Sen*, their Lordships of the Privy Council, held that a Court of law is bound to read the sections of an enactment without the commas inserted in the print;[18] and this view, that PUNCTUATION IS NO PART OF THE STATUTE, and cannot control the meaning of the section, was followed by the Allahabad High Court, in *Niaz Ahmad Khan* v. *Parsottam Chandra*,[19] and in *Mausa* v. *Mt. Ancho*.[20]

(*e*) THE SCHEDULES, annexed to the Court-Fees Act, and the headings under which they are placed, have been held to be ''*parts of the enactment.*''[21] But, the same general rule which regulates the effect of the preamble applies to these headings, namely, that they are not to be taken into consideration if the language of the enactment is clear.[22] The enacting part if clear overrides preamble.[23] A Preamble can never control or restrict the substantive provisions of the Act.[24]

(11) Old and New Law.—(*a*) It has been pointed out, in a preceding paragraph, that a reference to previous state of law is legitimate when the question is whether the Legislature

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(13) *Narayan Chandra* v. *Panihati Municipality*, 124 I.C. 483 (484, 485).

(14) Per Lord Herschell, in *West Derby Union, etc.*, supra, (1897) A.C. 647 (657).

(15) Per Anantakrishna Aiyar, J., in *Perichiappa Chettiar* v. *Nachiappan*, (1932) 139 I.C. 54 (59)=1932 Mad. 46 (52).

(16) *Devonshire (Duke)* v. O'Connor, (1890) 24 Q.B.D. 468 at 478.

(17) Per Sundara Aiyar, J., in *Secretary of State* v. *Kalekhan*, 16 I.C. 947 (948).

(18) 1929 P.C. 69 (71)=114 I.C. 604=8 Pat. 516 (P.C.).

(19) (1931) 129 I.C. 545=1931 All. 154; *also see* (1887) 14 Cal. 365=14 I.A. 30 (P.C.).

(20) 1933 All. 521 (522).

(21) *Altaf Ali* v. *Jamsur Ali*, 93 I.C. 909=1926 Cal. 638=30 C.W.N. 334.

(22) *Ibid.*, citing Craies, on Statute Law, 3rd Edn., p. 188; also see *Katarureddi* v. *Sreeramulu*, 1933 Mad. 120 (122).

(23) *Sahib Singh* v. *Dataram*, 1931 Lah. 706=134 I.C. 788.

(24) *Bhola Umar* v. *Kausilla*, 1932 All. 617 (F.B.).

intended to make any change in the law,[25] and a provision is of doubtful import.[26] Generally speaking, when the Legislature has passed an Act relating to a subject, and the language is clear, "it would not be fruitful of any good to start a research into the previous state of the law;"[27] as the language of the statute cannot be qualified or neutralized by indications gathered from previous legislation on the same subject.[28] An Act should be construed according to the natural meaning of the words used uninfluenced by the previous state of the law.[29] But when the meaning is doubtful, it is permissible to resort to the external evidence of the previous legislation, and the decided cases, as an aid to interpretation, along with the internal evidence derived from the Act itself.[30] It is only in the case of ambiguity that previous legislation may be referred to in order to throw light on the interpretation of a particular section.[31]

(*b*) As regards JUDICIAL DECISIONS it has been held "that where words or expressions in a statute are plainly taken from an earlier statute in *pari materia*, and have received Judicial interpretation, it must be assumed that the Legislature was aware of such interpretation, and intended it to be followed in later enactments."[32] "It is a recognized rule that where there have been decided cases before an Act is amended, if the amendment does not expressly show that the law as interpreted by the decisions is altered, the rule laid down by the decisions is to be adhered to..."[33] The Legislature is presumed to know not only the general principles of law but the construction which the Courts have put upon particular statutes, and when a section of an Act which has received a judicial construction is re-enacted in the same words, such re-enactment must be treated as a legislative recognition of the construction.[34] It has been pointed out

(25) *See* f.-n. (20), *ante;* 1933 Pat. 435 (S.B.) at p. 437; *also see* f.-n. (32), *ante;* 1930 P.C. 120=126 I.C. 88.

(26) *Premlal* v. *Radha Ballav*, (1931) 130 I.C. 134 at p. 136=58 Cal. 290=1931 Cal. 140.

(27) *Ramanandi* v. *Kalawadi*, 107 I.C. 14=1928 P.C. 2=7 Pat. 221 (P.C.) cited in *Irfan Ali* v. *The Official Receiver*, 130 I.C. 631 (633)=52 All. 748=1930 All. 837.

(28) *Administrator-General* v. *Premlal Mullick*, 22 Cal. 788; 22 I.A. 107 (P.C.); cited in *Avaru* v. *Asi Bai*, (1932) 135 I.C. 897 (900).

(29) *Keshavlal* v. *Pratap Singh*, (1932) 137 I.C. 564 (2).

(30) *See* f.-n. (32), *ante*, 1930 P.C. 120=126 I.C. 88.

(31) *Official Receiver* v. *Murtaza Ali*, 1932 All. 434 (435).

(32) *Sarab Ezra*, in the goods of, (1931) 134 I.C. 443 at p. 445 (Cal.)=1931 Cal. 560; *Radha Mohan* v. *Abbas Ali*, (1931) 133 I.C. 129, =1931 All. 294=53 All. 612 (F.B.).

(33) *Harnandanrai* v. *Baliram Prasad*, (1931) 130 I.C. 785 (787) (Pat.)=1931 Pat. 1; *also see* 40 All. 292; and 8 Cal. 593 (597), (universal practice of Courts for a number of years, a strong argument in favour of a construction).

(34) *Bipul Behari* v. *Nikhil Chandra*, (1930) 124 I.C. 65; *also see* 1927 Sindh 130=100 I.C. 204 (F.B.); *Gobaldas* v. *Lachmandas*, folld. in 1933 Sind 179 (180) (*Wadhumal* v. *Noor Ahmad*)—(Statute re-enacted *ipsissimis verbis*, considered to have the sanction of the legislature to particular construction).

by their Lordships of the Privy Council, in *Vasudev* v. *Srinivasa Pillay*[35] that when the legislature repeats in a later enactment, an earlier enactment that has obtained a settled meaning by judicial construction, the ordinary presumption is that it intends the words to mean what they were taken to mean before.[36] However, one fiscal Act cannot be construed by another fiscal Act,[36a] and the provisions of an Act of one Provincial Legislature form a very poor guide to the construction of the provisions of an Act of another Provincial Legislature.[37] Courts in construing a statute will give much weight to the interpretation put upon it at the time of its enactment and since, by those whose duty it has been to construe, execute or apply it, although such interpretation is not conclusive upon the Courts.[38] Proceedings of the Legislature are of no value in the construction of an Act.[39]

"Chief controlling revenue authority defined."

2. In this Act, unless there is anything repugnant in the subject or context, "chief controlling Revenue authority" means—

(*a*) in the presidency of Fort St. George, the Presidency of Fort William in Bengal and the Territories respectively under the administration of the Lieutenant-Governors of Bihar and Orissa, and the North-Western Provinces and the Chief Commissioner of Oudh—the Board of Revenue;

(*b*) in the Presidency of Bombay, outside Sindh and the limits of the town of Bombay—a Revenue Commissioner;

(*c*) in Sindh—the Commissioner;

(*d*) in the Punjab and Burma, including Upper Burma—the Financial Commissioner; and

(*e*) elsewhere—the local Government or such officer as the Local Government may, by notification in the Official Gazette, appoint in this behalf.

Synopsis.

8. Legislative changes.
9. "Lieutenant-Governor of N.-W. P. and the Chief Commissioner of Oudh."
10. Notifications re-appointment of Chief Controlling Revenue Authority.
11. The Bengal Tenancy Act—Rules and Orders.

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(35) 30 Mad. 426 (433)=34 I.A. 186 (P.C.).
(36) *Sabha Chand* v. *Piarelal*, (1930) 126 I.C. 161 (164) (F.B.).
(36-a) Sarajbasini Devi, 36 I.C. 125=20 C.W.N. 1125.
(37) *Emperor* v. *Khin Maung*, 1933 Rang. 275 (277).
(38) *Mathura Mohan* v. *Ramkumar*, 35 I.C. 305 (311)=43 Cal. 790.
(39) 22 Bom. 112; 31 Cal. 628 at p. 640.

Comments.

8. **LEGISLATIVE CHANGES**.—The original section relating to "repeal of enactments," was repealed by the Repealing Act, 1870, (XIV of 1870); and, the present section was added by Section 2, Court-Fees Amendment Act, 1901 (X of 1901).

9. **N.-W. P. AND OUDH**.—The Province is now known as "United Provinces of Agra and Oudh": and, is being administered by a Governor, in Council. The Expressions "Lieutenant-Governor of North-West Provinces and the Chief Commissioner of Oudh", are now archaic, and require amendment.

10. **NOTIFICATIONS**.—Government Notifications have been issued re-appointment of Chief Controlling Revenue Authority, for the Island of Bombay,[40] Baluchistan,[41] Central Provinces,[42] and the Assam Valley Districts.[43]

11. **RULES AND ORDERS**.—The High Court of Calcutta has framed rules under S. 2, of the Court-Fees Act, which govern fees on processes issued under the Bengal Tenancy Act.

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(40) See *Bombay Government Gazette*, 1902, Part I, p. 35 (Collector of Bombay and Superintendent of Stamps).

(41) See *Gazette of India*, 1908, Part I, p. 389.

(42) See *Central Provinces Gazette*, 1916, Part I, p. 1573 (Financial Commissioner of the Province).

(43) See *E. B. and A. Gazette*, 1905, Part I, p. 5.

CHAPTER II.

FEES IN THE HIGH COURTS AND THE COURTS OF SMALL CAUSES AT THE PRESIDENCY-TOWNS.[13]

3. The fees payable[14] for the time being to the clerks and officers[15] (other than the Sheriffs and Attorneys) of the High Courts established by Letters Patent, by virtue of the power conferred by [Section 15 of the Indian High Courts Act,[16] 1861, or Section 107 of the Government of India Act, 1915];

Levy of fees in High Courts on their Original Sides.

or chargeable in each of such Courts under No. 11 of the first, and Nos. 7, 12, 14, 20 and 21 of the second schedule to this Act annexed;[17]

and the fees for the time being chargeable in the Courts of Small Causes at the Presidency-towns, and their several offices,[18] shall be collected in the manner hereinafter appearing.[19]

Levy of fees in Presidency Small Cause Courts.

Synopsis.

12. **Legislative changes.**
13. **Heading of the Chapter.**
14. **"The fees payable".**
15. **"Clerks and officers."**
16. **Powers under S. 15, Government of India Act.**
17. **Fees chargeable under Schedules.**
18. **Fees chargeable in Small Cause Courts.**
19. **Mode of collection.**

Comments.

12. **LEGISLATIVE CHANGES.**—The words "Section 15 of the . . . . . Government of India Act, 1915" were substituted by S. 2 of the repealing and amending Act XXIV of 1917. The number '16' after '14' was repealed by the repealing and amending Act XII of 1891. The words "and extraordinary" were added by an amendment made in 1927.

13. **HEADING OF THE CHAPTER.**—The Court-Fees Act of 1870, as amended, by subsequent legislation, is divided into seven chapters which, as indicated by their heading, purport to deal with different subject-matters.[1] Chapter II of the Court-Fees Act consists of three sections only (3-5), and deals with High

(1) Per Miller, C.J., in *Krishna Mohan* v. *Raghunandan*, 87 I.C. 137=1925 Pat. 392=4 Pat. 336 (F.B.); also see *Abdul Hakim* v. *Chattanadha*, 1931 Mad. 456=132 I.C. 316.

Courts and Presidency Small Cause Courts.[2] Section 3, relates to levy of fees in High Courts on their original sides;[3] and in the Presidency Small Cause Courts and their offices.

14. THE FEES PAYABLE.—The fees leviable on the Original Side of a chartered High Court, and in the Presidency Small Cause Courts, are prescribed by enactment other than the Court-Fees Act.[4] Section 3, merely regulates the mode of collection so far as its language goes, but by implication it prescribes a Court-fee in certain cases, *vide* cl. 2 of the section.[5] In a Madras case, it was held that the new scale of fees applied to plaints filed on the Original Side of the Court on the date of its publication in the *Fort St. George Gazette*.[6]

15. CLERKS AND OFFICERS OF THE HIGH COURT.—It is assumed that a High Court collecting fees will have some officer or Court Clerk whose duty it is to see that the fees in any particular case are paid.[7] The fee leviable on an appeal from an order of a Judge on the Original Side is the fee payable for the time being to the officers of the High Court by virtue of the High Courts Charter Act directly, and when any difference of opinion arises between the officer of the Court levying the fee and any suitor or attorney as to the necessity or amount of the fee payable the procedure prescribed in S. 5 of the Court-Fees Act, is applicable.[8]

16. POWERS UNDER S. 15, GOVERNMENT OF INDIA ACT.—Section 3 is not a charging section, and it merely prescribes the mode of collection.[9] The fees mentioned in S. 3 are such as would be *payable* in the High Courts under their ordinary original jurisdiction, or in appeals from orders or decrees passed in the exercise of such jurisdiction and this is indicated in the margin by the words "*Levy of fees in the High Courts on their original sides.*"[10] The reference to the Government of India Act of 1915 was added by an amending statute

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(2) In the goods of *Bhubaneswar Trigunait*, 95 I.C. 529=1925 Cal. 1201=52 Cal. 871.

(3) *Krishna Mohan* v. *Raghunandan*, 87 I.C. 137 (143)=1925 Pat. 392=4 Pat. 336 (F.B.) also see *Abdul Hakim* v. *Chattanadha*, 1931 Mad. 457=132 I.C. 316.

(4) *See* S. 107, Cl. (*e*) of the Government of India Act, and Ch. XXVI of the Rules of the Calcutta High Court, on the original side; *also see* Presidency Small Cause Courts Act, 1882 (XV of 1882).

(5) Also see *Abdul Hakim* v. *Chattanadha*, 1931 Mad. 457=132 I.C. 316.

(6) 76 I.C. 721 (722).

(7) In the goods of *Bhubaneswar Trigunait*, 95 I.C. 529=1925 Cal. 1201=52 Cal. 871.

(8) *Mahomed Ishack* v. *Mahomed Mohidin*, 70 I.C. 813 (814)= 1922 Mad. 421=45 Mad. 849.

(9) *Krishna Mohan* v. *Raghunandan*, 87 I.C. 137 (147)=1925 Pat. 392=4 Pat. 336 (F.B.); cf. *Abdul Hakim* v. *Chattanadha*, 1931 Mad. 457 =132 I.C. 316.

(10) *Ibid.*, 87 I.C. 137 (139)=1925 Pat. 392=4 Pat. 336 (F.B.).

passed in 1917.[11] This S. 15 defines certain powers of the chartered High Courts, and the material portion of it is as follows:—"Each of the High Courts established under this Act shall have power to make and issue general rules for regulating the practice and proceedings of such Courts, and also to settle table of fees to be allowed to the Sheriffs, Attorneys and all clerks and officers of Courts.[12] Section 3 of the Court-Fees Act is controlled by reference to S. 15 of the High Courts Charter Act; and the High Courts frame rules under S. 15 of the Charter Act for the levy of fees in their original sides, and on appeal from an order of a Judge on the original side, which is the fee payable for the time being to the officers, of the High Court by virtue of the High Courts Charter Act directly.[13] It has been held by the Madras High Court, in a recent case, that the High Courts' power to make rules is derived from S. 107, Government of India Act, and the Fees Rules which the High Court has framed in respect of its extraordinary original civil jurisdiction are inconsistent with the provisions of the Court-Fees Act, and are to that extent *ultra vires* of the High Court.[14]

17. **FEES CHARGEABLE UNDER SCHEDULES**.—The schedules and subsidiary parts of the other chapters of the Court-Fees Act have no application to the High Court in the exercise of its ordinary civil juridiction.[15] Memorandum of appeal, presented in the High Court in appeals from subordinate Courts, is mentioned in Art. 1, Sch. I, and Art. 11, 17, 20 and 21 of Sch. II, which have prescribed fixed sums to be payable on memoranda of appeal filed in any Court.[16] Clause 2 of S. 3, by implication prescribes Court-fee in certain matters falling within the High Court's exercise of testamentary, and matrimonial jurisdiction.[17]

18. **FEES CHARGEABLE IN PRESIDENCY SMALL CAUSE COURTS**.—As to this, *see* Presidency Small Cause Courts Act, 1882 (XV of 1882), Ch. X. The fees are levied under S. 77 thereof, and S. 3, 5 and 25 of the Court-Fees Act

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(11) *Krishna Mohan* v. *Raghunandan*, 87 I.C. 137 (139)=1925 Pat. 392=4 Pat. 336 (F.B.).

(12) Cited and discussed in *Mahomed Ishack* v. *Mahomed Mohidin*, 70 I.C. 813 (814)=1922 Mad. 421=45 Mad. 489. (*Held*, that the power to make regulations for procedure necessarily includes the imposition of fees, and their collection through its proper officers.)

(13) *Mahomed Ishack* v. *Mahomed Mohidin*, 70 I.C. 813=1922 Mad. 421=45 Mad. 849.

(14) *Abdul Hakim* v. *Chattanadha*, 1931 Mad. 457=132 I.C. 316.

(15) *Mahomed Ishack* v. *Mahomed Mohidin*, 70 I.C. 813=1922 Mad. 421=45 Mad. 849.

(16) *Krishna Mohan* v. *Raghunandan*, 87 I.C. 137 (147)=1925 Pat. 392=4 Pat. 336 (F.B.).

(17) *Abdul Hakim* v. *Chattanadha*, 1931 Mad. 457=132 I.C. 316. *Held*, that the section is "most clumsily worded", and is "clearly an instance of bad drafting". The Court-Fees Act itself prescribes the fee, by implication, in cases covered by Cl. (2) of Ss. 3 and 4; while in all other cases coming before the High Court, and in the case of the Presidency Small Cause Courts also, it merely prescribes the mode of collecting the fee.

are made applicable also to such Small Cause Courts, but the rules relating to fees payable in Presidency Small Clause Courts are not exclusively those embodied in the Court-Fees Act.[18]

19. MODE OF COLLECTION—"IN THE MANNER HEREINAFTER PROVIDED."—Section 3 provides that in respect of certain proceedings in the original side of a chartered High Court and in all suits in the Small Cause Courts in Presidency-towns, Court-Fees on plaints and applications shall be collected "in the manner hereinafter provided," *viz.*, in the manner provided in Chap. V of the Act. The section is not a charging section and merely prescribes the mode of collection.[19] Section 25 of the Court-Fees Act, provides that "all fees referred to in S. 3 or chargeable under this Act shall be COLLECTED BY STAMPS," and S. 26 enacts that "the stamps used to denote any fees chargeable under this Act shall be impressed or adhesive, or partly impressed and partly adhesive, as the Governor-General of India in Council may, by Notification in the Gazette of India, from time to time direct. For detailed notes *see* Chap. V of the Act and the *Appendix*.

4. No document[22] of any of the kinds specified in the first or second Schedule to this Act annexed, as chargeable with fees, shall be filed,[23] exhibited or recorded in, or shall be received or furnished[24] by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original Civil Jurisdiction ;[25]

Fees on documents filed, etc. in High Courts in their extraordinary jurisdiction

or in the exercise of its extraordinary original Criminal jurisdiction;

or in the exercise of its jurisdiction as regards appeals[26] from the [Judgments(other than Judgments passed in the exercise of the ordinary original civil jurisdiction of the Court) of one][21] or more Judges of the said Court, or of a division Court;[21] or in the

in their appellate jurisdiction.

exercise of its Jurisdiction as regards appeals from the Courts subject to its Superintendence;[26]

As Courts of reference or revision.

or in the exercise of its Jurisdiction as a Court of reference or revision;[27]

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(18) *Ganpat* v. *Premsingh*, 15 I.C. 122=202 P.L.R. 1912 (F.B.).

(19) Per Jwala Prasad, J., in *Krishna Mohan* v. *Raghunandan*, 87 I.C. 137 (147=1925 Pat. 392=4 Pat. 336 (F.B.). Cf. *Abdul Hakim* v. *Chattanadha*, 1931 Mad. 457=132 I.C. 316. *Held*, that the Court-Fees Act itself, prescribes by implication, the Court-fees in cases falling within Cl. 2 of the section, *viz.*, matters pertaining to High Court exercise of testamentary, and matrimonial jurisdictions, *vide* Arts. 11 and 12 of Sch. I; also Arts. 7, 14, 20 and 21 of Sch. II.

unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.[23]

Synopsis.

20. Legislative changes.
21. Letters Patent appeals from single or division bench.
22. "Document."
23. Mandatory or prohibitory provision.
24. "Filed."
25. "Received."
26. "Furnished."
27. Extraordinary original jurisdictions.

Comments.

20. LEGISLATIVE CHANGES.—The Amending Act XIX of 1922, repealed the words "judgment of two", in the section, and substituted the words "judgments (other than judgments passed in the exercise of the ordinary original Civil Jurisdiction of the Court) of one". Similar changes were introduced locally in Bihar and Orissa by Act I of 1922, and in the Punjab by Act VII of 1922, whereby the word "*one*" was substituted in place of the word "*two*" between the words "of", and "or", in paragraph 3 of this section. This was done to rectify the anomaly pointed out in certain decisions of the Allahabad, and Patna High Courts.[20]

21. LETTERS PATENT APPEALS FROM SINGLE BENCH.—In the Allahabad case,[21] it was suggested that the word "*two*" in the section was written in error for "*one*". They found that the section, as worded, did not provide for levying of Court-fees upon a petition of appeal preferred under Letters Patent of the Allahabad High Court from the judgment of a single Judge. Similarly, the Patna High Court[22] pointed out that a "Division Bench" must consist of at least two Judges, of the High Court, (*vide* S. 108, of Government of India Act): and, though it could never have been intended that Letters Patent Appeals, from a Single Bench, should be filed without any Court-fees, it could not be levied under the terms of S. 4, of the Court-Fees Act. These rulings were referred to in *Hardial Shah* v. *Secretary of State*,[23] as authority for holding that S. 4 of the Court-Fees Act did not include within its purview an appeal from the judgment of a Single Bench: and that it was a *causus omissus*. The amendment now removes the defect, and the above authorities are no longer good law.

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(20) *Bhadool* v. *Manni*, 44 All. 13=63 I.C. 318=1922 All. 164=19 A.L.J. 816; *Hari Dayal* v. *Secretary of State*, 3 Lah. 420=67 I.C. 428=1923 Lah. 275; *Raghubar Singh* v. *Jethu*, 65 I.C. 675=3 P.L.T. 194=1922 Pat. 13 (1)=1 Pat. 384.

(21) *Bhadool* v. *Manni*, 44 All. 13=63 I.C. 318=1922 All. 164, *supra*.

(22) *Raghubar Singh* v. *Jethu*, 65 I.C. 675=1922 Pat. 13 (1)=1 Pat. 384.

(23) 69 I.C. 428=3 Lah. 420=1923 Lah. 275.

22. **DOCUMENT.**—The Full Bench of the Allahabad High Court in *Balkaran Rai* v. *Gobindnath Tiwari*,[24] held that a MEMORANDUM OF APPEAL IS A DOCUMENT included in the First and Second Schedules to the Court-Fees Act (VII of 1870), and is a document within the meaning of Ss. 4, 25, 28 and 30 of the Act, and therefore cannot be filed or recorded in, or received by the High Court unless and until the proper Court-fees in respect of it is paid, and is of no validity unless and until it is properly stamped. Further, that if a memorandum of appeal which, when tendered was insufficiently stamped, has subsequently been sufficiently stamped, the affixing of full stamps cannot have a retrospective effect so as to validate the original presentation, unless it has been done by order made under the second paragraph of S. 28 of the Court-Fees Act. In the case of a High Court, such an order can be made only by a Judge, and by him only in cases of "mistake or inadvertence"; these words meaning mistake or inadvertence on the part of the Court or its officers, and not on the part of the appellant or his advisers.

The same principle was applied to an insufficiently stamped APPLICATION FOR A REVIEW OF JUDGMENT in *Munro* v. *Municipality*[25] where it was held that there was no "mistake or inadvertence" within the meaning of the second paragraph of S. 28; and, consequently the Judge had no power under the circumstances to admit the application for review as one presented after ninety days from the date of the decree, and that there being no presentation within ninety days of an application which could have been *received*, under S. 4 of the Court-Fees Act, the application ought to have been rejected as barred by limitation.

This practice, of allowing time to make good the deficiency in Court-fee, irrespective of any question of limitation and of the circumstances under which a suit, or a memorandum of appeal is tendered when insufficiently stamped, was thus held to be in contravention of law, and the Court refused to be influenced by extraneous considerations, such as questions of hardship, in construing an Act of Legislature in a manner contrary to its plain wording. Section 582-A, of the Civil Procedure Code of 1882, was introduced into the Code by Act IV of 1892 to supersede the Full Bench ruling of Allahabad High Court.[26] This new section applied only to appeals, and to applications for Review. However, the present SECTION 149 OF THE NEW CODE OF CIVIL PROCEDURE (ACT V OF 1908) IS IN GENERAL TERMS, and enacts that where the whole or any part of any fees prescribed for any document by the law for the time being in force relating to Court-fees has not been paid, the Court may, in its discretion, at any stage allow the person, by whom such fee is payable, to pay the whole or part, as the case may be of such Court-fee; and, upon

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(24) (1890) 12 All. 129 (F.B.) [Not folld. in 123 P.R. 1907; 32 Mad. 305 (F.B.); 19 Cal. 780; 27 Bom. 330.] [Folld. in 28 All. 310; 29 All. 749.]

(25) 12 All. 57=(1889) 9 A.W.N. 197.

(26) *See* f.-n. (24) above.

such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.

After the addition of this section,[27] it must be taken that the practice of giving the party concerned time to make up the deficiency, is fully competent, and in accordance with law; AND APPLIES TO ALL DOCUMENTS CHARGEABLE WITH COURT-FEES under the Court-Fees Act, such as plaints, memoranda of appeal, or of cross-objections, applications for review of judgment, written statements pleading a set-off, or counter claim.[28] A memorandum of cross-objections in an appeal under O. 41, R. 21, Civil Procedure Code, is a document within the meaning of the section, since it is mentioned in Sch. I, Art. 1 of the Act. But a memorandum of objections under O. 41, R. 26, is not mentioned in Sch. I, Art. 1, and is not a document within the meaning of this section.[29] It was held, in a reference under the Court-Fees Act, that no Court-fee is necessary on appeals coming up to the High Court for disposal, on a reference by the Government of India, under the Agency rules framed under Act XXIV of 1839. If the High Court could be regarded as a Court of reference, under S. 4 (5), the appeal would be chargeable with an *ad valorem* fee under Sch. I, Art. 1, of the Act.[30] An application to review an appellate decree passed on a Letters Patent Appeal, is liable to payment of Court-fee under Sch. I, Art. 5, of the Act.[31]

23. MANDATORY OR PROHIBITORY PROVISION.— Section 4 of the Court-Fees Act is mandatory, and it prohibits a Court from filing, recording or receiving an improperly stamped document of the class specified in the First or Second Schedule of the Act.[32] Where an appellant, deliberately and to suit his own convenience pays insufficient Court-fee on his appeal, the Court is not bound to receive the appeal, and give the appellant time to make good the deficiency,[33] though this practice is common, where the amount of Court-fee is open to doubt or cannot be ascertained by the Court till the record is received, or

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(27) *See* S. 149, C.P. Code, 1908.

(28) Mulla, C.P. Code, 9th Edn., p. 390.

(29) 25 Mad. 24 (reference under Court-Fees Act, S. 5); also see *Damodar Prasad* v. *Masudan Singh*, 1928 Pat. 85, and *Mahomed Salimullah* v. *Khalilul Rehman*, 1932 All. 526.

(30) 22 Mad. 162; *also see* 1933 Sindh 149 (150)—(*Commissioner of Income-tax* v. *Khemchand Ramdas*). *Held*, that Schs. I and II do not mention Court-fee payable on a reference under S. 66 of the Income-tax Act. Therefore no Court-fee was payable, under S. 4, to documents produced in a reference to the High Court under S. 66, Income-tax Act.

(31) *Husaini Begam* v. *The Collector*, 11 All.178=(1889) 9 A.W.N. 27.

(32) *Balkanrai* v. *Gobind Nath*, 12 All. 129 (F.B.); *also see* f.-n. (33), below.

(33) *Ram Sahay* v. *Lakshmi Narain*, 42 I.C. 675; also see *Brijbhushan* v. *Tota Ram*, 118 I.C. 228 (229)=1929 All. 75=50 All. 980; and *Shyamlal* v. *Gauri Shanker*, 119 I.C. 700=1929 Nag. 294.

it appears that the appellant has made an honest attempt to comply with the law.[34] Section 4 of the Court-Fees Act, however, forbids a High Court to receive a memorandum of appeal unless the proper Court-fee is paid, and Section 149 of the Civil Procedure Code is not to be construed in such a way as to nullify the express provisions of S. 4, of the Court-Fees Act.[35] Ordinarily a High Court, or a Court of appeal should not entertain an appeal without its being properly stamped,[36] and an appeal cannot be regarded as having been validly presented if the copy of the order appealed against is not properly stamped.[37] But it may direct the memorandum to be returned to counsel, or party, with liberty to file afresh on payment of full Court-fees accompanied by an application for extension of time under S. 5 of the Limitation Act.[38-39] Section 149 of the Civil Procedure Code, 1908, gives a discretion to the Court to allow a party to make up the deficiency of Court-fee payable on a memorandum of appeal, even after the expiration of the period of limitation prescribed for filing of the appeal, *e.g.*, where there is a *bona fide* mistake, or misunderstanding of the law as to valuation, but not in cases of gross negligence. There is this difference between the powers of a Court in case of an insufficiently stamped plaint, and an insufficiently stamped appeal, that under O. 7, R. 11 (First Schedule, Civil Procedure Code, the Court is bound to give time to the plaintiff to make good the deficiency and the plaint shall be rejected only where the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so: but it is doubtful if this provision applies to appeals. According to all High Courts, a *plaint* cannot be rejected under O. 7, R. 11, Civil Procedure Code, for under-valuation or for insufficiency of stamp unless the plaintiff is *given an opportunity* to correct the valuation or to supply the deficient stamp, as the case may be, within a time to be fixed by the Court, and he fails to do so,[40] and it is only

(34) *Ramsahay* v. *Lakshmi Narain*, 42 I.C. 675.

(35) *Ibid.*, 42 I.C. 675=3 P.L.J. 74.

(36) *Surendra* v. *Hafijur Rahman*, 30 I.C. 379.

(37) *Shabadat* v. *Hukam Singh*, 71 I.C. 736=1924 Lah. 401.

(38 & 39) *See* f.-n. (33) above; 118 I.C. 228 (229); and 119 I.C. 700. Compare, *Achut Ramchandra* v. *Rai Nagappa*, (21 I.C. 337=38 Bom. 41). But, this view has not been followed at Patna—(*Ramsahai* v. *Lakshmi Narain*, 42 I.C. 675=3 P.L.J. 74=5 P.L.W. 18); nor, by the Lahore High Court—(*Lekh Ram* v. *Ramjidas*, 57 I.C. 215=1 Lah. 234). The Madras High Court had also discussed from the Bombay view in (*Akharaju Narayana* v. *Seshamma*, 26 I.C. 33=27 M.L.J. 677); *but see* 1932 M.W.N. 104.

(40) *See* Chitaley and Rao's C.P. Code, p. 1505; citing *Radhakanta Sha* v. *Debendra Narayan*, 49 Cal. 880=70 I.C. 101=1922 Cal. 506 (508); *Subramania* v. *Rama*, 105 I.C. 881=1927 Mad. 1002; *Jiwandas* v. *Khushabai Ram*, 39 I.C. 766 (Punjab); *Wasawa Ram* v. *Bahadur Chand*, 25 I.C. 24 (Punjab); *Bassavayya* v. *Venkatapayya*, 95 I.C. 439=1926 Mad. 676 (677); *Deoraj* v. *Kunj Behari*, [124 I.C. 420=5 Luck. 474=1930 Oudh 104 (105)]; *Deonath Sahai* v. *Radhanath*, (70 I.C. 378=1922 Pat. 56).

after the decision of the suit, that the trial Court is no longer seized of the case, and has no jurisdiction to require the plaintiff to make good the deficiency in Court-fee.[41] But, where a memorandum of appeal is insufficiently stamped, according to the High Courts of Allahabad,[42] Lahore[43] and Patna,[44] and the Judicial Commissioner's Court of Nagpur,[45] the appellate Court has the power to reject an appeal under by S. 4 of the Court-Fees Act, as the Courts cannot receive a memorandum of appeal, unless proper fee has been paid and that the exercise of discretionary power under S. 149, Civil Procedure Code, cannot be claimed as of right. However, the High Courts of Bombay,[46] and Calcutta,[47] as also the Chief Court of Oudh,[48] take the view that O. 7, R. 11, Civil Procedure Code, though applying in terms to *plaints* insufficiently stamped, applies to memorandum of appeals also by virtue of S. 107, Civil Procedure Code. The Madras High Court, now adopts the latter view, though in an earlier ruling, it had accepted the opposite view.[48a]

24. "FILED".—The word "*filed*," certainly means something more than presented for admission. It implies that the plaint or memorandum of appeal has been admitted, and put on the files or records of the Court.[49] If then a plaint or memorandum of appeal has been so filed, on the report of a Court official that the Court-fees paid on it are sufficient, it would be open to the defendant at the hearing to contend that the fees paid were not sufficient, and that for that reason the plaint on the files of the Court was not a valid plaint.[50] Where owing to the gross negligence on the part of legal advisers of the appellant, the memorandum of appeal was filed bearing insufficient Court-fee, and the deficit Court-fee was delayed till after the expiry of the period of limitation, it was held, that under S. 4 of the Court-Fees Act, the memorandum could not be considered to have been properly filed till the deficit in the Court-fee was paid.[1] Having regard to the provisions of Ss. 4 and 28 of the Court-Fees Act an appeal cannot be regarded as having been

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(41) *Durgadevi* v. *Parbati*, 1933 Lah. 208, folld. 1919 Cal. 194; and 1925 Lah. 131.

(42) *Brijbhukhan* v. *Totaram*, 50 All. 980=118 I.C. 228=1929 All. 75 (76); also see *Jaisingh* v. *Sitaram*, 74 I.C. 757=1923 All. 349.

(43) *Lekhram* v. *Ramjidas*, 57 I.C. 215=1 Lah. 234.

(44) *Ramsahai* v. *Lakshmi Narain*, 42 I.C. 675 (Pat.).

(45) *Atmaram* v. *Kastur Chand*, 124 I.C. 241=1930 Nag. 224.

(46) *Achut* v. *Nagappa*, 21 I.C. 337=38 Bom. 41.

(47) *Jananda Sundari* v. *Madhabchandra*, 138 I.C. 643=59 Cal. 388 =1932 Cal. 482 (484, 485).

(48) *Deoraj* v. *Kunj Behari*, 124 I.C. 420=1930 Oudh 104=5 Luck. 474.

(48-a) *Akharaju Narayana* v. *Seshama*, 26 I.C. 33 (34); cf. *Narasimha* v. *Venkatakrishna*, 1932 M.W.N. 104.

(49) *Amjid Ali* v. *Muhammad Ismail*, 20 All. 11 (F.B.).

(50) *Ibid.*, 20 All. 11 (F.B.).

(1) *Jodhan Pershad* v. *Nanhku Pershad*, 46 I.C. 509 (Pat.)=3 Pat. L.J. 484.

validly presented if the copy of the order appealed against does not bear a Court-fees stamp of eight annas or one rupee according to the value of the subject-matter.[2] And, the weight of authority is in favour of the view that the Court would be justified in rejecting an appeal not bearing the proper amount of Court-fee.[3]

25. "RECEIVED".—Section 4 of the Court-Fees Act, forbids a High Court to receive a memorandum of appeal unless the proper Court-fee is paid. It was observed in *Florina Marties* v. *Pinto*, that the fact that appellants are often put to inconvenience in the matter of purchasing Court-fee stamps cannot justify the Court in accepting appeals insufficiently stamped, but they may possibly constitute "sufficient cause" within the meaning of S. 5 of the Limitation Act.[4]

26. "FURNISHED".—The word "furnished" is used in contradistinction to "received" and it signifies *supplied*, or *given*. A document which has to be taken by a party from the Court cannot be furnished to him till be has paid the proper Court-fee therefor. A mere order of the Court is not sufficient without an issue of the actual grant of probate of a will, or a succession certificate.[5]

27. EXTRAORDINARY ORIGINAL JURISDICTIONS.—Section 4 of the Court-Fees Act deals with the fees on documents coming before the High Courts in the exercise of their appellate or revisional jurisdiction in cases coming from the subordinate Courts, or in their extraordinary original jurisdiction,[6] (both Civil and Criminal). In *Varadaraja* v. *Arumugam*,[7] a suit pending before Presidency Small Cause Court, below the value of Rs. 1,000 transferred to High Court for trial was treated as triable in its extraordinary original jurisdiction conferred by Letters Patent. No rules are framed by the High Court to cover such a case. The Court-fees prescribed by the Court-Fees Act shall be paid. It was held that the High Court Original Side Rules as to Court-fees apply to cases transferred from that Court to the High Court, as provided by S. 14 of the City Civil Courts Act.[8] This section does not apply to the High Court in the exercise of

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(2) *Shabadat* v. *Hukam Singh*, (1923) 71 I.C. 736=1924 Lah. 401.

(3) *See* f.-ns. (42, 43 and 44) above, 50 All. 980; 74 I.C. 757 (All.); 1 Lah. 234; 42 I.C. 675 (Pat.); 124 I.C. 241=1930 Nag. 224.

(4) 42 I.C. 675 (677); *also see* 19 I.C. 971.

(5) *Alamelammal* v. *Surayaprakasaroya*, 31 I.C. 491 (Mad.)=38 Mad. 988=29 M.L.J. 680 *also see* and *cf.* 17 W.R. 480, *Held*, that a certificate under Act XXVII of 1860, should be issued directly it is granted, provided the proper stamp prescribed for such certificate be furnished; *see also* 12 Cal. 542 (546). (Case under S. 6 of the Act.)

(6) Per Miller, C.J., and Jwala Pershad, J., in 87 I.C. 137 (139, 143)=4 Pat. 336=1925 Pat. 392 (F.B.). *See* 139 I.C. 127 (Lah.) (Revision against order of remand in exercise of inherent powers of Court under S. 151, C.P. Code).

(7) 91 I.C. 751=1925 Mad. 1216.

(8) *Abdul Hakim Sahib* v. *Chattanadha Aiyar*, 60 M.L.J. 435.

its ordinary original civil jurisdiction, ordinary original criminal jurisdiction, jurisdiction as regards appeals from its original side, and its jurisdiction in matrimonial, admiralty, and ecclesiastical causes. It was held in a Madras case, that no Court-fee is necessary on appeals coming before the High Court for disposal, on a reference by the Government of India, under the agency rules framed under Act XXIV of 1839.[9]

Procedure in case of difference as to necessity, or amount of fee.

5. When any difference arises[30] between the officer whose duty it is to see that any fee is paid under this Chapter and any suitor or attorney, as to the necessity of paying a fee or the amount thereof,[32] the question shall, when the difference arises in any of the said High Courts, be referred to the Taxing Officer,[31] whose decision thereon shall be final,[33] except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of such High Court, or of such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf.

When any such differance arises in any of the said Courts of Small Causes, the question shall be referred to the Clerk of the Court, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the first Judge of such Court.

The Chief Justice shall declare who shall be Taxing Officer within the meaning of the first paragraph of this section.[36]

Synopsis.

28. Legislative changes.
29. Application and scope of the section.
30. Difference of opinion.
31. Reference to Taxing officer.
32. Jurisdiction of Taxing officer.
33. Final decision.
34. Taxing officer.
35. Refund.
36. Notifications.

Comments.

28. LEGISLATIVE CHANGES.—This section has been amended, locally in Madras, by Madras Act V of 1922, S. 3, thus:—"In the second paragraph of S. 5 of the principal Act, the words "Registrar," and "Chief Judge" shall be substituted for "clerk of the Court", and "First Judge," respectively.

(9) Reference under Court-Fees Act, S. 5, 22 Mad. 162.

29. APPLICATION AND SCOPE OF THE SECTION.—This section requires that there should be, in the first instance, a DIFFERENCE OF OPINION between the officer whose duty it is to see that the proper fee is paid, and any suitor or attorney, as to the fee payable; and secondly that there should be a REFERENCE TO THE TAXING OFFICER, who should then give a DECISION ON THE QUESTION RAISED. Unless the question is raised before the Taxing Officer, and unless he brings his mind to bear on the question, S. 5 of the Act has no application.[10] AN ORDER OF ADMISSION by the Registrar of the High Court, does not present an objection being taken later as to the deficiency in the stamp duty.[11] "Admit, subject to stamp report", is a form of order usually made, which is always understood to be a conditional order of admission in the sense that if the report shows that the stamp duty paid is insufficient, the order does not operate as an order of admission.[12] When the officer whose duty it is to see that the proper fee is paid, reports that there is a deficiency, the report may be contested on behalf of the appellant, and this would give rise to a difference mentioned in the section, calling for the matter being placed before the Taxing Officer for his decision.[13] THE OBJECT OF S. 5 OF THE COURT-FEES ACT is to secure payment prior to litigation and to afford as little scope as possible for litigation over the payment.[14] Questions both as to the necessity of paying the fee, or as to the amount thereof, arising in a High Court, cannot arise independently of S. 5 of the Court-Fees Act,[15] and the Taxing Officer has jurisdiction to decide such questions when they are raised before him, not necessarily upon a difference of opinion between the taxing clerk, and litigant. All that is necessary is that the question should be raised before the Taxing Officer, that he should bring his mind to bear on the question, and that he should decide it.[16]

30. "DIFFERENCE ARISES".—A difference arises within the meaning of the section as soon as the office reports that the stamp is insufficient.[17] A difference of opinion may be assumed when the question is raised before the Taxing Officer, and he brings his mind to bear on the question before he decides it.[18]

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(10) *Kasturi Chetty* v. *Deputy Collector*, 21 Mad. 269; cf. *Ranga Pai* v. *Baba*, 20 Mad. 398 (assumed that there was a "*decision*" by the Taxing Officer).

(11) *Ibid.*, 21 Mad. 269 (270).

(12) *Balkaram Rai* v. *Gobind Nath*, 12 All. 129 (F.B.).

(13) *Koer Karan Singh* v. *Gopal Rai*, 4 I.C. 123=32 All. 59.

(14) In the goods of *Bhubeneswar*, 95 I.C. 529 (531, 532)=52 Cal. 871=1925 Cal. 1201.

(15) In the goods of *Bhubeneswar*, 95 I.C. 529=52 Cal. 871=1925 Cal. 1201; *Koer Karan Singh* v. *Gopal Rai*, 4 I.C. 123; also see *Mahomed Ishack* v. *Mahomed Mohidin*, 45 Mad. 849=1922 Mad. 421=70 I.C. 813 (814).

(16) Per Rankin, J., in "In the goods of *Bhubeneswar*", 95 I.C. 529 (531, 532)=52 Cal. 871=1925 Cal. 1201.

(17) *Balkaran Rai* v. *Gobind Nath*, 12 All. 129 (F.B.).

(18) *See* f.-ns. (14) and (16) above.

Under the High Court Rules, the person who reports to the High Court on deficiency or otherwise of stamps is THE STAMP REPORTER.[19] A recent amendment, adds after the words "Stamp Reporter," the words "or any other officer specially appointed in this behalf." The Court-Fees Act, however, merely mentions "an officer whose duty it is to see that the fee is paid under this chapter," and takes no cognizance of the fact whether he is the Stamp Reporter, or the Chief Inspector of Stamps.[20]

31. REFERENCE TO TAXING OFFICER.—The section is wide enough to cover a reference to Taxing Officer of QUESTIONS AS TO NECESSITY, OR AMOUNT OF FEE PAYABLE ON an appeal from an order of a Judge on the original side of the High Court, being the fee payable for the time being to the officers of the High Court by virtue of the High Court's charter directly.[21] A QUESTION AS TO THE CATEGORY OF THE RELIEF SOUGHT in a plaint, or by a memorandum of appeal, is for purposes of S. 12 of the Court-Fees Act, not a "question relating to a valuation for the purpose of determining the amount of Court-fee chargeable," under Chap. IIJ of the Court-Fees Act, and an appeal lies as to the fundamental question of category;[22] but, the same principle does not apply to S. 5, under which the decision of the Taxing Officer as to the amount of the Court-fee payable is made final, and the decision as to category is the preliminary point which has to be decided before a decision as to the amount of Court-fee can be delivered.[23] It has been held by a Full Bench of the Patna High Court,[24] on a careful review of S. 5, that the Taxing Officer has jurisdiction to decide a QUESTION RELATING TO VALUATION for the purpose of determining the amount of Court-fee payable by the appellant either or his plaint, or on his memorandum of appeal under S. 5 of the Court-Fees Act, and the Taxing Officer is not bound by the valuation appearing on the memorandum of appeal where such valuation has been accepted in the lower Court either without question, or after contest.[24]

Probate fee is treated in the same manner as any other Court-fee, and a suitor who satisfies the Taxing Officer satisfies the Revenue, at least for the time being. If the suitor does not satisfy the Taxing Officer, he must either pay the Court-fee demanded or persuade the Taxing Officer that the question is one of general importance so as to entitle the suitor to the decision of the Chief

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(19) *Mt. Bhagwanti* v. *Mt. Dhanwanti*, 1932 All. 319 (320); also see *Krishna Mohan* v. *Raghunandan*, 87 I.C. 137=4 Pat. 336=1925 Pat. 65 (F.B.).

(20) *Mt. Bhagwanti* v. *Mt. Dhanwanti*, 1932 All. 319.

(21) *Mahomed Ishack* v. *Mahomed Mohiddin*, 70 I.C. 813 (814)= 1922 Mad. 421=45 Mad. 849; *also see* f.-n. (15) above.

(22) See *Balkan Rai* v. *Gopinath*, 12 All. 129 (F.B.); (citing 1 All. 360; 2 All. 63; 2 All. 682).

(23) *Koer Karan Singh* v. *Gopal Rai*, 4 I.C. 123=32 All. 59.

(24) *Krishna Mohan* v. *Raghunandan*, 4 Pat. 336=1925 Pat. 65=87 I.C. 137 (140, 143) (F.B.).

Justice, or the Taxing Judge.[25] It was held in *Perumall* v. *Kandaswami*,[26] that the decision of a Judge sitting on the original side in a contentious probate suit is a "*final judgment*" within the meaning of the serial No. 35 of the Appendix II of the Original Side Rules.[26] "The sum charged upon a grant of probate, or of letters of administration is not a tax or duty levied upon the property upon which the Probate or Administration operates, . . but it is merely a fee levied by the Court issuing the Probate or Letters of Administration for the work done in this connection."[27]

32. JURISDICTION OF TAXING OFFICER.—The taxing officer is appointed by the Chief Justice of the High Court under provisions of S. 5 of the Court-Fees Act. The Taxing Officer, or the Taxing Judge, as the case may be, is the proper person to determine the fee payable on a memorandum of appeal presented to the High Court, and for this purpose he may investigate the question of proper valuation of the subject-matter of the appeal and his decision on the point is final. Even if he should make a manifest mistake in the exercise of his jurisdiction, his decision is not subject to an appeal to, or review by, the Court itself.[28] The Taxing Officer is not bound by the valuation in the subordinate Court even though decided after contest.[29] The Taxing Officer may call upon the suitor to give further evidence of the value of the subject-matter in dispute.[30] The Taxing Officer is also not bound to advise the parties as to the fee.[31] The Taxing Officer may decide questions as to necessity or amount of fee payable on an appeal from an order of a Judge on the original side of the High Court.[32] He may decide questions as to category of suits, or relating to valuation, as necessary for determining the amount of Court-fee payable by the appellant either on his plaint, or on his memorandum of appeal, under S. 5 of the Act.[33] "The power of the Court to decide disputed questions of Court-fee is vested in the Taxing Officer subject to his power to refer the matter to the Taxing Judge when a question of general importance arises. This authority extends to all such questions arising in the High Court, whether the deficiency alleged is on the memorandum of appeal in the High Court or on

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(25) In the goods of *Bhubeneshwar Trigunait*, 95 I.C. 529 (531)= 1925 Cal. 1201=52 Cal. 871.

(26) 72 I.C. 925=923 Mad. 362=46 Mad. 592; also see *Mahomed Ishack* v. *Mahomed Mohidin*, 70 I.C. 813 (815)=4 Pat. 336 (F.B.) (under Arts. 35 and 36 of Appendix II of the Madras Original Side Rules).

(27) In the goods of *G. T. Williams*, 75 I.C. 466=1924 Cal. 115= 50 Cal. 597.

(28) *Krishna Mohan* v. *Raghunandan*, 4 Pat. 336=1955 Pat 65=87 I.C. 137 (142) (F.B.).

(29) *Krishna Mohan* v. *Raghunandan*, 4 Pat. 336=1925 Pat. 65=87 I.C. 137 (F.B.).

(30) *Ibid.*, 87 I.C. 137 (149)=4 Pat. 336 (F.B.).

(31) *Balkaran Rai* v. *Gobind Nath*, 12 All. 129 (F.B.).

(32) *Krishna Mohan* v. *Raghunandan*, 87 I.C. 137 (140, 143, 148); also see *Mahomed Ishack* v. *Mahomed Mohidin*, 70 I.C. 813 (814).

(33) *See* f.-ns. (22) to (24) *ante*.

a plaint or memorandum of appeal filed in the Court below.''[34] His decision as to the amount of fee payable is final, and the High Court has no jurisdiction to interfere with it, even if he had done something which the law does not allow him to do.[35] The authority competent to determine a question of valuation or a question of category with respect to a memorandum of appeal presented to the High Court on its appellate side, is *firstly*, an officer whose duty it is to receive the memorandum, *secondly*, an officer who shall be the Taxing Officer and *thirdly*, when the Chief Justice so directs a Judge of High Court appointed to determine disputes arising between the suitor and the Taxing Officer.[36] When the High Court has delegated its jurisdiction to a Taxing Officer, it has no jurisdiction left to do any of the acts which it could otherwise have performed, and if the Taxing Officer cannot decide a question of valuation, no other authority can discharge that duty.[37] Sulaiman, J. observed in *Chunni Lal* v. *Sheo Charan*, that ''in a case where there has been a reference to a Taxing Officer, or the Taxing Judge, the question of insufficiency of Court-fee as paid on the memorandum of appeal cannot be raised again at the time of the hearing of the appeal, for S. 5 of the Court-Fees Act would clearly be a bar to any such reconsideration. But where no reference under S. 5 has been made at all the Court hearing the appeal must decide it.''[38]

The Court would not be precluded from hearing an objection as to deficiency where the Taxing Officer gave no decision on a reference.[39] The Taxing Officer may however refer the case to the Taxing Judge for his opinion.[40] The Taxing Judge must decide the question himself, and cannot refer it to a Division Bench.[41] The Taxing Officer, however, has no power to direct an appellant to make any cash deposit as a condition precedent to the trial of any question of Court-fees.[42]

33. FINALITY OF DECISION.—(1) The decision of a Taxing Officer, determining the amount of Court-fee payable is final,[43] in the sense that the order is not open to appeal, review

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(34) *Mt. Bahal Kuar* v. *Narain Singh*, 84 I.C. 822=1925 All. 184; *also see* 91 I.C. 729=1926 Mad. 96.

(35) *Rameekhar Prasad* v. *Sheonandan*, 2 Pat. 198=1923 Pat. 137=73 I.C. 43.

(36) Per Mullick, J., in *Krishna Mohan* v. *Raghunandan*, 4 Pat. 336=1925 Pat. 65=87 I.C. 137 (149) (F.B.).

(37) *Ibid.*

(38) 47 All. 756=1925 All. 787=89 I.C. 122 (123).

(39) 127 I.C. 128=1930 Mad. 597.

(40) *Khacheru* v. *Kharaj Singh*, 7 I.C. 315=33 All. 20; *Kuldip Sahai* v. *Harihar Prasad*, 3 Pat. 146=1924 Pat. 161=75 I.C. 871; *Perumal* v. *Kandaswami*, 46 Mad. 592=1923 Mad. 362=72 I.C. 925; *also see* 1933 Pat. 81; compare, 1932 All. 485 (F.B.)—(Final order after reference to Full Bench was passed by the Taxing Judge.)

(41) 7 I.C. 315=33 All. 20; 3 Pat. 146=1924 Pat. 161=75 I.C. 871, *supra.*

(42) *Janab Prasad* v. *Askaran Prasad*, 6 Pat. 602=105 I.C. 742.

(43) *Mt. Chanderbatti* v. *Gorey Lal Singh*, 52 I.C. 508=4 P.L.J. 700.

or revision.[44] The terms of the section are imperative. Once such an order has been passed the Court cannot go behind it to examine the method which the Taxing Officer adopted to arrive at his decision.[45] The High Court, after delegating its jurisdiction to a Taxing Officer, has no jurisdiction left to interfere with his decision,[46] even though the decision is erroneous, or the Taxing Officer "has done something which the law does not allow him to do";[47] or even if the fee levied "is in excess of that payable under the law";[48] or there is a "manifest mistake in the exercise of their jurisdiction."[49] A Division Bench has no right to question the decision, or to re-open the valuation of appeal[50] and, there is no provision in the Act under which a Court can direct the refund of the additional Court-fee paid by the appellants on demand by the Taxing Officer of the Court,[1] the only remedy being by APPLICATION FOR REFUND of the excess amount from the Revenue Officers, on a certificate from the Taxing Officer.[2]

(2) It has been observed by Jwala Prasad, J. in *Krishna Mohan* v. *Rughanandan*[3] that "in order that the decision of the Taxing Officer shall be final, the following conditions would seem to be necessary: (1) there must be a contest between the officer, whose duty it is to see that the proper Court-fee is paid, and the suitor; and (2) that an opportunity is given to the parties to the contest, namely the suitor and the Government. Therefore, the decision of the Taxing Officer cannot be final if he determines it *ex parte*, and without giving an opportunity to the suitor to show by adducing evidence or otherwise what the value of the subject-matter of the appeal, and consequently the amount of Court-fee payable should be."[4] His decision again, cannot be final, if he

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(44) *Koer Karam Singh* v. *Gopal Rai*, 4 I.C. 123=32 All. 59; citing *Balkaran* v. *Gobind Nath*, 12 All. 129 (F.B.); also *Badri Prasad* v. *Kundan-lal*, 15 All. 117; also the *Lagan Barat* v. *Khakhan*, 43 I.C. 521 (522); In the goods of *Bhubeneswar*, 52 Cal. 871=1925 Cal. 1201=95 I.C. 529: *Swaminatha* v. *Guruswami*, 105 I.C. 119; and *Ganga Ram* v. *Revenue*, 52 Bom. 61=1927 Bom. 643=106 I.C. 56.

(45) 4 I.C. 123=32 All. 59, *supra*.

(46) 4 Pat. 336=1925 Pat. 65=87 I.C. 137 (149) (F.B.).

(47) *Ramsekhar* v. *Sheonandan*, 2 Pat. 198=68 I.C. 316 (317)= 1923 Pat. 137; *also see* 15 All. 117; and *Sheopujan* v. *Kesho Prasad Singh*, 2 Pat. 919=1924 Pat. 310=76 I.C. 347 (349).

(48) *Hitendra Singh* v. *Darbhanga*, 92 I.C. 626=1926 Pat. 147.

(49) Per Edge, C.J., in *Krishna Mohan* v. *Raghunandan*, 4 Pat. 336 =1925 Pat. 65=87 I.C. 137 (142) (F.B.).

(50) Per Jwalaprasad in *ibid.*, supra, 87 I.C. 137 (145), citing 43 I.C. 521; and 52 I.C. 508, etc.; *also see* 106 I.C. 119=1927 Mad. 940= 53 M.L.J. 457.

(1) *See* 39 P.R. 1907; and *Hitendra Singh* v. *Darbhanga*, 92 I.C. 626=1926 Pat. 147.

(2) *Hari Har Guru* v. *Ananda Mahant*, 20 I.C. 498=40 Cal. 365; following *In re* Grant, 14 W.R. 47; also see *Hitendra Singh* v. *Darbhanga*, 92 I.C. 626=1926 Pat. 147.

(3) 4 Pat. 336=1925 Pat. 65=87 I.C. 137 (145) (F.B.).

(4) 4 Pat. 336=1925 Pat. 65=87 I.C. 137 (145) (F.B.); citing *Jugal Parshad* v. *Parbhu Narain*, 8 I.C. 1145=37 Cal. 914;

merely admits an appeal, without having his mind brought to bear on the question, and without his having *decided* the matter, though it need not have been so decided "upon some sort of formal reference to decide the dispute."[5]

(3) The term "final" in S. 5 of the Court-Fees Act, has precisely the same meaning as the term "final" in S. 12 of the Act. But the subject to which that term is applied in S. 5 is different from that to which it is applied in S. 12.[6] "A decision as to category is the preliminary point which has to be decided before a decision as to the amount of Court-fee can be arrived at," and "according to the plain language of S. 5, the amount fixed by the Taxing Officer, no matter how he arrives at his conclusion, is fixed finally, and is binding so far as the purposes of Court-fee are concerned."[7]

34. TAXING OFFICER—NOTIFICATIONS.—The Taxing Officer is the Registrar of the High Court on its appellate side.[8] The order for registration of appeal signed by the Deputy Registrar would not count as a decision by the "Taxing Officer", within the meaning of S. 5 of the Act. Under notification No. 1247, dated 21st March, 1930, the Master of the High Court is now the Taxing Officer in Madras. In Allahabad, the Registrar of the High Court, is the "Taxing Officer" for purposes of S. 5 of the Court-Fees Act.

Kasturi Chetti v. *Deputy Collector*, 21 Mad. 269; *Amjad Ali* v. *Mahomed Israil*, 20 All. 11.

(5) In the goods of *Bhubeneswar*, 52 Cal. 871=95 I.C. 529 (531)= 1925 Cal. 1201.

(6) *Balkaran Rai* v. *Gobind Nath*, 12 All. 129 (F.B.); also see *Koer Karan Singh* v. *Gopal Rai*, 4 I.C. 123=32 All. 59.

(7) 4 I.C. 123=32 All. 59, *supra; also see* Para. 32, *ante.*

(8) *Jugal Pershad* v. *Parbhu Narain*, 8 I.C. 1145=37 Cal. 914; citing *Kastwri* v. *Deputy Collector*, 21 Mad. 269; also see *Amjad Ali* v. *Kalicharan*, 24 W.R. 258.

CHAPTER III.

FEES IN OTHER COURTS AND IN PUBLIC OFFICES.

Fees on documents filed, etc., in Mufassal Courts or in public offices.

6. Except in the Courts hereinbefore mentioned,[36] no document of any of the kinds specified as chargeable in the first or second schedule to this Act annexed[37] shall be filed,[41] exhibited or recorded in any Court of Justice, or shall be received or furnished[42] by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.[38]

Synopsis.

35. **Legislative changes.**
36. **Courts hereinbefore mentioned.**
37. **Documents chargeable in Schedules.**
38. **Mandatory and Prohibitory provision.**
39. **Procedure.**
40. **Effect of S. 28 Court-Fees Act.**
41. **Meaning of the terms 'filed', 'furnished', etc.**
42. **Unstamped and insufficiently stamped documents.**
43. **Retrospective presentation of documents.**
44. **Discretionary exercise of powers under S. 149, C.P. Code.**
45. **Rejection of plaint or appeal for deficient Court-fee.**
46. **Right to demand further time.**
47. **Pauper suits and appeals.**

Comments.

35. **LEGISLATIVE CHANGES.**—By Act III of 1932 (United Provinces), a local amendment has been made to S. 6, which limits the fee on suits, appeals or other proceedings under the Oudh Rent Act, 1886, Agra Tenancy Act, 1926, and the United Provinces Land Revenue Act, 1901, to three-quarters of the fee indicated in the schedules to this Act, except where the suit, appeal or proceeding falls within first schedule, and the value of the subject matter exceeds Rs. 500. It is further provided that the fee chargeable on the documents in the schedules shall not be less than that prevailing before the commencement of this amendment.[1]

36. **"COURTS HEREINBEFORE MENTIONED."**—See S. 3, 4 and 5, referring to the High Courts, and the Presidency Courts of Small Causes. In Courts other than the High Courts and Presidency Small Cause Courts, the presiding officer has to determine the sufficiency or otherwise of the Court-fee,[2] and when there is a dispute as to the amount of Court-fee payable in a suit, the Court ought to frame an issue on the point, and

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(1) *See* Muthuswamy, p. 71.

(2) *Balkaran Rai* v. *Gobind Nath*, 12 All. 129 (147) (F.B.).

decide it either in the beginning, or along with the other issues on trial of the suit.[3]

37. DOCUMENTS CHARGEABLE IN SCHEDULES.—"APPLICATION" in Sch. II of this Act has been construed to mean an application in writing.[4] Consequently, applications to the Court, not required by the Civil Procedure Code to be in writing need not bear any Court-fee,[5] and an oral application for an adjournment of appeal need not be accompanied by any stamp.[6] An application for a Certificate of sale, is not compulsory and need not be in writing; and, in case any person chooses to apply in writing, the paper need bear no stamp.[7] Similarly, an application for refund of stamp duty need not be made in writing, and requires no stamp duty.[8] An application, under S. 13, for refund of Court-fee is exempt from Court-fee;[9] so also a complaint of illegal seizure of cattle under the Cattle-Trespass Act.[10] An application to inspect a record,[11] or an application by a witness for a document filed by him in obedience to a summons, is not chargeable under the schedules.[12] A memorandum of objections under O. 12, R. 26, is not a document chargeable under the schedules, and therefore requires no stamp duty.[13] Applications made by telegraph, or oral communications are not liable to stamp duty under this Act, but written communications of their contents must be only stamped.[14] A MEMORANDUM OF APPEAL, as also a MEMORANDUM OF CROSS-OBJECTIONS in an appeal under O. 41, R. 21, Civil Procedure Code, is a document with the meaning of the section.[15] An appeal referred by the Government of India, under the Agency rules, framed under Act XXIV of 1839, to the High Court for disposal, does not require to be stamped with any Court-fee.[16] A certificate under Act XI of 1858 is one of the documents mentioned in the second schedule of the Court-Fees Act.[17] A SUIT INSTITUTED BEFORE A SETTLEMENT OFFICER but transferred to a Civil Court under

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(3) *Ganga Prasad* v. *Bhawani*, 62 I.C. 853=8 O.L.J. 279.
(4) *Texley* v. *The Administrator-General*, 2 N.-W.P. 418.
(5) *Ibid.*
(6) *Ibid.*
(7) 13 Bom. 670.
(8) 9 W.R. 357.
(9) 1932 All. 590: *cf.* 1923 Cal. 596.
(10) 8 Bom. 22.
(11) Letter No. 2681, dated 14th April, 1882, from the Financial Commissioner, Punjab.
(12) 15 W.R. 237.
(13) 25 Mad. 24; also see *Damodar Prasad* v. *Masudev*, 1928 Pat. 85=105 I.C. 108; and 1932 All. 526—(*Mohd. Salimullah* v. *Khalilul Rehman*), 140 I.C. 47=54 All. 465.
(14) Bengal Stamp Manual, 1890, p. 118, S. 7; *also see* Madras Stamp Manual, 1903, p. 203.
(15) 12 All. 129; 25 Mad. 24.
(16) 22 Mad. 162.
(17) *Sahai Nand* v. *Mangni Ram*, 12 Cal. 542 (546).

S. 5 of Regulation III of 1872 requires no stamp.[18] A WRITTEN STATEMENT either put in by the party at or before the first hearing of the suit or called for by the Court is not chargeable with any Court-fee.[19] The Court-fee payable on the CLAIM FOR SET-OFF should be the same as for a plaint in a suit.[20] A written statement containing a claim to set-off is chargeable with the Court-fee which would be payable on a plaint of that nature.[21] A written statement must be regarded as a plaint or counter-claim, in regard to the set-off, and should be stamped according.[22] But, where the defendant pleaded a claim for an unliquidated amount by way of damages only as a reply to the suit, and no decree could be passed in defendant's favour for any sum of money, the written statement did not require to be stamped as a plaint.[23]

37. (a) EXEMPTIONS.—The Court-Fees Act contains no express exemption in favour of the Government under the Court-Fees Act, and consequently, Government pays Court-fees like other litigants, and if successful, recovers the same as costs from the adversary.[24] Similarly an application by a Native Chief to a British Court or officer in connection with property situate or a transaction effected in British India must bear the requisite stamp duty.[25] For cases of exemption from Court-fee, see S. 18 and 19 of the Act, as regards reduction or remissions of Court-fee, see S. 35 of the Act, and the rules framed by the Governor-General in Council, and the Several Local Governments set out in the Appendix. The notifications of the Government of India and of the Local Governments exempt certain documents from payment of Court-fee, *e.g.*, documents produced by Civil and political prisoners or documents used in Criminal Courts.

38. MANDATORY AND PROHIBITORY PROVISION.—Section 6 is the charging section in Chap. III of the Court-Fees Act, and it declares that no plaint or memorandum of appeal shall be received unless in respect of it there he paid a fee of an amount not less than that indicated in Schs. I and II as the proper fee for such document.[26] This provision is similar to S. 4 of the Act, and contains a mandatory and prohibitory provision as regards Court-fee payable in respect of suits or appeals in the subordinate Courts.[27] It is provided that fees are to be levied on certain documents, and that no such

(18) 12 C.W.N. 917.

(19) 5 Bom. 400; *also see* 12 C.L.R. 367.

(20) 8 All. 396=6 A.W.N. (1886) 159=32 Cal. 654=1 C.L.J. 364.

(21) 13 Bom. 672 folld. 672; 8 All. 396, *supra*.

(22) *Chenappa* v. *Raghunatha*, 15 Mad. 29; *also see* and cf. *Fakir Chand* v. *Gisborne & Co.*, (1903) 8 C.W.N. 174; and 9 Bur. L.R. 285.

(23) *Bhagat Singh* v. *Devi Dial*, 85 All. P.R. 1908.

(24) *Bell* v. *The Municipal Commissioners*, 25 Mad. 457 (487).

(25) B. G. Resolution, 2740, dated 17th April, 1888, P.D.

(26) Per Mullick, J., in *Krishna Mohan* v. *Raghunandan*, 4 Pat. 336 =1925 Pat. 65=87 I.C. 137 (147) (F.B.).

(27) *In re* Maharaja of Venkatagiri, 123 I.C. 203 (207).

document shall be receivable in Court without payment of the prescribed fee.[28]

39. PROCEDURE.—THE PROCEDURE to be followed when a plaint or memorandum of appeal is filed in a Court other than a chartered High Court or a Presidency Small Cause Court is as follows:—"The Court will first of all decide into which of the various classes (or CATEGORIES) enumerated in Schs. I and II the document falls. The Court will then proceed to see whether the proper fee is a fixed fee under Sch. II, or an *ad valorem* fee under Sch. I. No QUESTION OF VALUATION arises if the fee is a fixed fee; but if an *ad valorem* fee is leviable then the Court will proceed to value the subject-matter or the subject-matter in dispute or fix the amount of the relief claimed according to RULES FOR COMPUTATION set out in Ss. 7 and 8 of the Act. If a LOCAL OF FURTHER INVESTIGATION is necessary the Court may proceed under S. 9 when there is a dispute as to the amount of Court-fee payable in a suit, the Court ought to frame an issue on the point, and decide it either in the beginning, or proceed with the trial of the suit and decide it along with the other issues."[29] It was held in *Nanhoon Singh* v. *Tofanee Singh*, that the amount or value of the subject-matter in dispute in a suit should be estimated for purposes of jurisdiction, not according to the rules of the Court-Fees Act, but by the aid of the best evidence available bearing upon the actual amount or value.[30] This computation of the value for purposes of Court-fee, and not for jurisdiction, is the valuation referred in S. 11 of Chap. III, and the COURT'S ADJUDICATION on a question relating thereto is final in respect of a plaint or memorandum of appeal under the first clause of S. 12."[31] The second clause of S. 12, gives a Court of appeal POWER TO COLLECT DEFICIT COURT-FEES IN RESPECT OF FEES PAYABLE IN SUBORDINATE COURTS, and the High Court as a Court of appeal, reference and revision is competent to exercise this power in respects of all Courts subordinate to it.[32] "The High Court may undoubtedly under the second clause of S. 12 require a party to pay an additional fee upon the plaint or memorandum of appeal in the lower Court, and this power is conferred on the Court itself as distinguished from the Taxing Officer whose powers are confined under S. 5 to the fees payable in the High Court."[33]

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(28) *Mahadei* v. *Ram Kishen Das*, 7 All. 528 (530); also see *Hari Ram* v. *Akbar Husain*, 29 All. 749 (757, 758).

(29) *Ganga Pershad* v. *Bhawani*, 62 I.C. 853.

(30) 12 B.L.R. 113=20 W.R. 33; 18 W.R. 109.

(31) Per Mullick, J., in *Krishna Mohan* v. *Raghunandan*, 4 Pat. 336 =1925 Pat. 65=87 I.C. 137 (148) (F.B.).

(32) Per Mullick, J., in 4 Pat. 336=1925 Pat. 65=87 I.C. 137 (148) (F.B.).

(33) Per Edge, C.J., in 4 Pat. 336=87 I.C. 137 (141) (F.B.), *supra*.

40. EFFECT OF S. 28, COURT-FEES ACT.—S. 28 says:—

"No document which ought to bear a stamp under this Act shall be of any validity unless and until it is properly stamped. But if any such document is, through mistake or inadvertence, received, filed, or used in any Court or office without being properly stamped, the presiding judge, or the head of the office, as the case may be, or in the case of a High Court any Judge of such Court may, if he thinks fit, order that such document must be stamped as he may direct; and on such document being stamped accordingly, the same and any proceeding relative thereto shall be as valid as if had been properly stamped in the first instance.[34]

"The collection of Court-fee is no part of a Judge's functions in the trial of a suit which can be said to have ceased with its determination."[35] "The powers conferred under S. 12 of the Court-Fees Act read with S. 10 (11) to which it expressly refers, are intended to be exercised before the disposal of the case, and not after it has been decided finally so far as the Court is concerned."[36] "The provision as to the retrospective effect of the validity of such documents relates only to those documents which being defectively stamped, have been wrongly received and used in the course of the trial of a case which has not yet been finally adjudicated upon."[37] A Full Bench of the Allahabad High Court, has held that:—

"When a plaint has been registered and a Court having reason subsequently to think that the market value or nett annual profits of the subject-matter of the claim has been wrongly estimated, holds an inquiry either *per se* or through a commissioner appointed for the purpose, and finds that a sufficient Court-fee has not been paid, it is bound to stay the suit, and to fix a time within which the additional fee can be paid, without any regard to the fact whether that be a time within or beyond the period of limitation prescribed for the suit."[38]

If the fee is paid within the time so fixed, the plaint is as valid as if it had been properly stamped in the first instance on the day when the suit was instituted.[38] A genuine mistake or inadvertence can be prayed in aid on behalf of petitioners, where an application for review presented within 89 days bears less than half the stamp but if the deficiency is not due to any mistake, or inadvertence, and it is not made up till after the expiry of the period of limitation, the application cannot be deemed to have been presented within time.[39]

41. MEANING OF THE TERMS "FILED"; "FURNISHED, ETC."—For "meaning of "document" see paragraphs 36 and 37, *ante*, and for meaning of "filed", "received", "furnished", see S. 4, paragraphs 24, 25 and 26, *ante*. It was

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(34) *See* S. 28, Court-Fees Act; *also see* 7 All. 528 (531).

(35) Per Oldfield, J., in 7 All. 528 (534).

(36) Per Mahmood, J., in 7 All. 528 (532).

(37) *Ibid.*, 7 All. 528 (533).

(38) *Hari Ram* v. *Akbar Husain*, 29 All. 749 (764, 765).

(39) *Midnapore Zemindary* v. *Dayardra Nath*, 96 I.C. 433 (434, 435), compare *Syed Ambur Ali* v. *Kalichand*, 24 W.R. 258 (genuine mistake or inadvertence); and *Nourang* v. *Janardhan*, 80 I.C. 794=1924 Cal. 994.

held, in *Dhunput Singh* v. *The Government*,[40] that 'furnishing' meant in S. 6 of the Act is made at the time when the Court determines to grant the certificate, and when it is to be drawn up ready to be issued to the party. "If that were not so, a delay on the part of the Court, for which the party would not be in any way responsible, might result in his being subject to a much higher stamp duty than be would have been if he obtained the certificate directly the Court had granted it."[41] Similarly, it was held in *Sahai Nand* v. *Mungniram*[42] that a certificate under Act XL of 1858 is one of the documents mentioned in the second schedule of the Court-Fees Act, and when the section says that such a document shall not be filed, exhibited or recorded in any Court of Justice, or received or furnished by any public officer, it means that a certificate cannot actually come into existence until the person who has the permission of the Court to obtain it deposits the requisite amount of stamp duty. For an exception to the general rule that an improperly stamped document should not be exhibited or acted upon unless the proper fee is paid, see S. 33, which relaxes the imperative provisions of S. 4 and 6 in their application to criminal Courts.[43]

42. UNSTAMPED AND INSUFFICIENTLY STAMPED DOCUMENTS.—The omission to stamp a document chargeable under the Act is NOT AN OFFENCE in itself as it is under the Stamp Act of 1899. The section prohibits (1) the filing, exhibiting or recording of any document specified under first or second schedules of the Act, by any Courts of Justice (other than the High Court and Presidency Small Cause Court,) and (2) receiving or furnishing by a Public Officer of any such document, unless there be paid the proper fee mentioned in the schedules. Provision is further made for COLLECTION OF DEFICIENCY, UNDER THE PROVISIONS OF S. 28, if through mistake or inadvertence, a document not properly stamped is received or used; and an exception is made in S. 33, as to admission in Criminal cases of documents for which proper fee has not been paid, when, in the opinion of the presiding Judge, it is necessary to prevent a failure of Justice.

43. RETROSPECTIVE PRESENTATION.—SECTION 149, CIVIL PROCEDURE CODE provides that:—

"Where the *whole*[44] or *any part* of any fee prescribed for any document by the law for the time being in force relating to Court-fees has not been paid the Court may, in its discretion,[45] at any stage,[46] allow the person, by whom such fee is payable, to pay the whole or part as the case may be, of such Court-fee; and upon such payment the document, in respect

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(40) 17 W.R. 489.

(41) Per Couch, C.J., in 17 W.R. 489 (490).

(42) 12 Cal. 542.

(43) *See* S. 33, Court-Fees Act, 1870.

(44) *Faizullah* v. *Mauladad Khan*, 1929 P.C. 147 (148)=10 Lah. 337=117 I.C. 493, compare *Muthu* v. *Venuku*, 36 I.C. 957 (958)—(S. 12 (*ii*), of the Court-Fees Act, does not apply when no fee at all has been paid).

of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance."

This section thus enacts an EXCEPTION TO THE RULE IN SS. 4 AND 6 OF THE ACT, under which no document chargeable with Court-fee shall be filed, or recorded in any Court of Justice, unless the Court-fee payable in respect thereof is paid, at the time of the institution or presentation of such document. The effect of this provision is that "where a deficiency in Court-fee is made good within the time allowed by the Court, but beyond the period of limitation prescribed for the suit, the suit is not barred by time."[47] Likewise, this section authorises the Court to treat a Memorandum of appeal as presented in time, if the Court-fees are paid within the time allowed by the Court.[48] Where deficiency is made good, it must be done *within the time* specified by the Court to have the force or effect of RETROSPECTIVE PRESENTATION.[49] If payment is made *beyond* the time allowed by the Court, the presentation shall be deemed to have been made *on the date* such deposit is made good.[50] The Court may however exercise its dis-

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(45) *Saidunnissa* v. *Tajendra*, 44 I.C. 398 (399) Cal. (*bona fide* mistake); *Bahuria Sambho* v. *Hari Har*, 41 Cal. 1092=24 I.C. 276 (278); *Haricharan* v. *Baikuntha*, 21 I.C. 866 (Cal.); (mistake as to amount of requisite stamp); also see *Chiragh Din* v. *Samanda*, 97 I.C. 223=1926 Lah. 689 (690); (accidental mistake due to change in law); *Muhd. Shafi* v. *Delhi House*, 115 I.C. 757=1928 Lah. 274 (275) (shortage of stamps in the treasury); *Gul Muhd.* v. *Sabz Ali Khan*, 113 I.C. 270=1930 Lah. 24 (26) (question of Court-fee a controversial one); *Sahibji* v. *Piru*, 10 P.R. 1919=49 I.C. 188 (*bona fide* mistake by pleader); *Ram Kishan* v. *Hirde Ram*, 71 I.C. 737=1923 Lah. 135 (137); (*bona fide* mistake and debatable question involved); *Moti Ram* v. *Bhanu Ram*, 80 I.C. 257=1923 Lah. 629 (630); (*bona fide* mistake; deficiency made up as soon as painted out); *Mihan Lal* v. *Indar Singh*, 84 I.C. 946=1925 Lah. 246; (*bona fide* mistake and unintentional omission); *Ramzor Singh* v. *Secretary of State*, 92 I.C. 319=1926 Lah. 509 (510); (*bona fide* mistake; misled by an error of Court); *Secretary of State* v. *Vidyawati*, 1929 Lah. 748 (old practice followed); also see *Ramsahay* v. *Lakshmi Narayan*, 42 I.C. 675 (Pat.); (question open to doubt, and honest attempt made to comply with the law); *Amir Mandal* v. *Mohan Chandra*, 80 I.C. 1030=3 Pat. 337=1924 Pat. 663 (no negligence or laches); *Adit Prasad* v. *Ramharakh*, 4 Pat. 180=91 I.C. 213=1925 Pat. 435 (438) (Court-fee paid to pleader and misappropriated by pleader's clerk).

(46) *Akharaju Narayana* v. *Seshamma*, 26 I.C. 33; *Priya Nath* v. *Mianjan*, 29 I.C. 571 (Cal.); *Arshad Ali* v. *Zorawar Singh*, 92 I.C. 986 =1926 Lah. 346 (347)—(Order to make up deficiency passed simultaneously with the dismissal of suit); *Kolisetti* v. *Mithapalli*, 95 I.C. 439=1926 Mad. 676 (677).

(47) *Gavarangei* v. *Botakrishna*, 32 Mad. 305 (311)=1 I.C. 507 (F.B.); 4 I.C. 503 (F.B.); *Ramlal* v. *Khundat-ul-nissa*, 23 I.C. 403 (All.); also see *Hemchandra* v. *Durga*, 3 I.C. 435 (436) Mad.; also see *Ramdial* v. *Sher Singh*, 45 All. 518=74 I.C. 358=1923 All. 538; *Mahomed Galif* v. *Abdul Rahim*, 89 I.C. 419=1926 Nag. 156 (157).

(48) *Hari Charan* v. *Baikuntha*, 21 I.C. 866 (867); *Dial Das* v. *Sunder Das*, 65 I.C. 741 (743)=3 Lah. 35=1922 Lah. 225; also see *Faizullah Khan* v. *Mauladad*, 1929 P.C. 147=117 I.C. 493=10 Lah. 737 (P.C.); and *Jowala Singh* v. *Dhaud*, 1932 Lah. 21=133 I.C. 122; *see also* 1933 Lah. 590.

(49) *See* f.-ns. (47) and (48), *supra;* also see *Muhd. Ayub* v. *Delhi House*, 1928 Lah. 274 (275).

(50) *Hara Kumar* v. *Safatullah*, 2 C.L.J. 70=9 C.W.N. 844; *Padmanand* v. *Anant*, 34 Cal. 20 (26).

cretion at any stage,[1] and give leave to pay the full fee, or to make good the deficiency, even after the expiry of limitation,[2] and, the Court may accept payment of a deficient Court-fee even after the time originally fixed by the Court,[3] or grant an EXTENSION OF THE PERIOD ORIGINALLY FIXED, UNDER S. 148, CIVIL PROCEDURE CODE, up to the date of payment.[4] Where a party pays a deficiency in Court-fee on a plaint beyond the time fixed by the Court and has not asked the Court to extend the time for payment, but the Court nevertheless excuses the delay and receives the fee, the only reasonable interpretation is that the Court has implicity although not explicitly, extended the time.[5] The Court can also enlarge the time even after the lapse of the period originally fixed by it,[6] such extensions may be granted even more than once.[7]

44. DISCRETIONARY EXERCISE OF POWERS UNDER SECTION 149, CIVIL PROCEDURE CODE.—The powers conferred by S. 149, Civil Procedure Code are discretionary, and not mandatory, they cannot be claimed as of right, and the section is not interpreted so as to nullify the provisions of S. 4 and 6 of the Court-Fees Act.[8] Where the amount of Court-fee payable is open to doubt or cannot be ascertained by the Court till the record is received or it appears that the appellant has made an honest attempt to comply with the law, the Court may properly receive the appeal and allow time for the deficiency, if any, to be made good. Where, however, an appellant deliberately and to suit his own convenience pays insufficient Court-fee on his appeal, the Court is not bound to receive the appeal and give the appellant time to make good the deficiency.[8] The Court will not allow the deficiency to be made up on the day of the hearing unless it is satisfied that some GROUNDS exist FOR THE EXERCISE OF ITS DISCRETION; of these grounds the principal one is that A BONA FIDE MISTAKE was made,[9] but the

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(1) *Basavayya* v. *Venkatappayya*, 95 I.C. 439=1926 Mad. 676.

(2) *Gavaranga* v. *Betro Krishna*, 32 Mad. 305 (311)=1 I.C. 507=4 I.C. 503 (F.B.); also see *Surendra Prasad* v. *Aftabuddin Ahmad*, 70 I.C. 43 (Cal.).

(3) *Gaya Loan Office* v. *Awadh Behari*, 37 I.C. 507 (509) (Pat.); also see *Jawala Singh* v. *Dhano*, 132 I.C. 122 (123)=1932 Lah. 21 (22); *Raghunanda* v. *Ram Sunder*, 4 Pat. 190=85 I.C. 173=1925 Pat. 299.

(4) *Budhanshah* v. *Sitanath*, 7 I.C. 578 (581) (Cal.); *Brahmmoyi* v. *Audi Si*, 27 Cal. 376 (378); *Thangatha* v. *Iravatheswara*, 28 I.C. 504 (505) —(Court taken to have extended the time up to date of actual payment); also see *Pawan Kuar* v. *Dulaxi*, (58 I.C. 216) (Pat.).

(5) *Kolsetti* v. *Mithapalli*, 95 I.C. 439 (440)=1926 Mad. 676.

(6) *Amir Hossain* v. *Nanak Chand*, 6 I.C. 424 (Cal.); *Chanda Singh* v. *Ishar Singh*, 113 P.R. 1894; *Majlis* v. *Munna*, 84 P.R. 1876; *Parshotamlal* v. *Lachmandas*, 9 All. 252 (253).

(7) *Nasir Mandal* v. *Satischandra*, 51 I.C. 154.

(8) *Ramsahay* v. *Lakshmi Narayan*, 42 I.C. 675 (Pat.); cf. *Deonandan* v. *Ganga Prasad*, 120 I.C. 313 (absence of doubt as to fee payable and no real attempt to comply with the law).

(9) *Sallunnissa* v. *Tejendra Chandra*, 44 I.C. 398 (Cal.); also see f.-n. (45) above.

provision of S. 149 was not intended to cases where a party consciously, and intentionally puts insufficient Court-fee (*e.g.* Re. 1 on a memorandum of appeal) in an attempt to avoid the law of limitation, and it would in such a case be returned at once to the party presenting it.[10] Where there is gross negligence in valuing an appeal, the delay in making up the deficiency will not be condoned, and the appeal is liable to be dismissed as time-barred if the proper Court-fee is paid only after the expiry of the period of limitation.[11] A discretion cannot be exercised in favour of an appellant unless he shows REASONABLE DILIGENCE in prosecution of his appeal[12] and, where there is no *bona fide* mistake, but a deliberate attempt either to avoid payment of sufficient Court-fee or to defer the day of payment as long as possible, extension of time will not be granted.[13] Similarly, where an appeal is filed in time on an insufficiently stamped memorandum, and on the deficiency being pointed out to the appellant by the office he disputes the order for more Court-fee and does not make up the deficiency till long after the appeal is barred by time, he is not entitled to the benefit of S. 149, Civil Procedure Code.[14] An appellant is under a duty to pay Court-fee at least on the valuation which he had himself placed upon his claim, especially where the pleas of poverty and ignorance are not well-founded.[15] Lewis, J., observed in *Ram Rakha* v. *Beli Ram*,[16] that he failed to understand how there could be such a thing as a *mala fide* mistake, but where the mistake in filing an insufficiently stamped appeal is one which could not have been made if due care and attention had been exercised, the Court will not extend the time so as to allow the appellant to pay the proper Court-fee, and thus deprive the respondent of the valuable right which has accrued to him.[17] Poverty of the appellant is not a sufficient ground for extension of time for payment of Court-fee.[18] However, when a trial Court has made an order under

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(10) *Jnanadasundari* v. *Madhab Chandra*, 59 Cal. 388=1932 Cal. 482 (484, 485).

(11) *Gursarandas* v. *District Board*, 102 I.C. 615=1927 Lah. 884; following 2 Lah. 1=56 I.C. 143=1922 Lah. 233; 75 I.C. 667=1923 Lah. 309; 57 I.C. 215=1 Lah. 234; and 55 P.R. 1913=19 I.C. 788; also see *Shyamlal* v. *Gauri Shankar*, 119 I.C. 700=1929 Nag. 294.

(12) *Dalip Singh* v. *Umrao Singh*, 19 I.C. 788=55 P.R. 1913.

(13) *Lekh Ram* v. *Ramjidas*, 57 I.C. 215=1 Lah. 234; also see *Muhd. Majidullah* v. *Muhd. Hamidullah*, 69 I.C. 196=1924 Lah. 325 (327); *Muhd. Suleman* v. *Ghumandilal*, 134 I.C. 127=1931 Lah. 343; and *Ramji Lal* v. *Shibba*, 75 I.C. 667=1923 Lah. 309.

(14) *Wadhawa Singh* v. *Sundar Singh*, 59 I.C. 667=1921 Lah. 371; also see *Tikkan Ram* v. *Bosa Ram*, 67 I.C. 106 Lah.; and *Ramji Lal* v. *Shibba*, 75 I.C. 667=1923 Lah. 309.

(15) *Shabu* v. *Bakri*, 67 I.C. 901=1921 Lah. 43 (44).

(16) 4 I.C. 554 (555).

(17) *Fatteh Singh* v. *Babu Ram*, (1922) 67 I.C. 130 (Lah.).

(18) *Mt. Amtul Qadir* v. *Muhd. Yusaf*, 49 I.C. 871 (872); also see *Shabu* v. *Bakri*, 67 I.C. 901=1921 Lah. 43 (44).

S. 149, Civil Procedure Code in the exercise of its judicial discretion, the Appellate Court will not go into the question.[19]

45. REJECTION OF PLAINT OR APPEAL FOR DEFICIENT COURT-FEE—O. 7, R. 11, CIVIL PROCEDURE CODE.— Where a plaint is written upon paper insufficiently stamped, the Court is bound to give the plaintiff time to make good the deficiency. See O. 7, R. 11 (*c*), Civil Procedure Code;[20] the provision relates to Procedure, but it is mandatory, and, its effect is that a plaint cannot be rejected under this rule for undervaluation, or for insufficiency of stamp unless the plaintiff is *given an opportunity* to correct the valuation, or to supply the deficient stamp as the case may be, within a time to be fixed by the Court, and he fails to do so.[21] Section 149 of the Civil Procedure Code containing a general provision relating to all documents, cannot control the rule laid down in O. 7, R. 11, which deals specifically with plaints.[22] The Court may, in its discretion, at any stage, allow a party to pay the deficiency in Court-fee, but this will not over-ride O. 7, R. 11, in the sense that S. 149 gives the Court any discretion to refuse to grant the time which O. 7, R. 11 says it shall grant.[23] The Court will act under O. 7, R. 11, even though the plaintiff has deliberately, and without any excuse paid an insufficient Court-fee.[24] The time given under O. 7, R. 11, Civil Procedure Code may be enlarged from time to time under S. 148 of the Code.[25] Such extension may be granted by the Court even more than once,[26] and even after the expiry of the time initially granted. Upon payment of the deficit Court-fees the suit must be taken to have been instituted on the day when the plaint was originally filed.[27] In *Kawaklya* v. *Shyamlal*, it was observed, that Courts and the rules of procedure regulating their conduct are intended for the broad purpose of facilitating Justice, and not for impeding it, and the powers of the Court as

(19) *Priya Nath* v. *Mianjai*, 29 I.C. 571 (Cal.); *Ramlal* v. *Khundatulnissa*, 23 I.C. 408 (All.); and *Jai Singh* v. *Sitaram*, 74 I.C. 757=1923 All. 349 (where such discretion has been exercised, it will not be interfered with on appeal; but where the Court has not exercised any discretion in the matter at all, the appellate Court will be justified in making an order of remand for the purpose).

(20) *Radha Kant* v. *Debendra*, 70 I.C. 101=49 Cal. 880=1922 Cal. 506; *Kisan* v. *Manjai*, 105 I.C. 30=1928 Nag. 24 (27).

(21) *Chitaley's* C.P. Code, p. 1505, citing *Radha Kanta* v. *Debendra*, *supra*, 49 Cal. 880=1922 Cal. 506 (508)=70 I.C. 101; *Subramania* v. *Rama Iyer*, 105 I.C. 881=1927 Mad. 1002 (1003); *Jiwandas* v. *Khushabi*, 39 I.C. 766 (P.C.); *Wasawa Ram* v. *Bahadur Chand*, 25 I.C. 24 (Punj.); *Kolsetti* v. *Mithapalli*, 95 I.C. 439 (440)=1926 Mad. 676 (677); *Deonath Sabai* v. *Radha Kant*, 70 I.C. 378=1922 Pat. 56.

(22) *Jiwandas* v. *Khushasi*, 39 I.C. 766 (P.C.).

(23) *Kolsetti* v. *Mithapalli*, 95 I.C. 439 (440)=1926 Mad. 676 (677).

(24) *Deonath Sabai* v. *Radha Kant*, 70 I.C. 378=1922 Pat. 56.

(25) *Nasir Mandal* v. *Satish Chandra*, 51 I.C. 154 (155) (Cal.); *Nand Kishore* v. *Jeonath*, 93 I.C. 64=1926 Nag. 312.

(26) *Ibid.*, 51 I.C. 154 (155) (Cal.).

(27) *Dwarkanath* v. *Kedarnath*, (2 I.C. 1) (Cal.); *Amir Hosain* v. *Nanak Chand*, 6 I.C. 424 (Cal.); *Muhd. Shafi* v. *Delhi House*, 1928 Lah. 274 (275).

regards the rejection of the plaint should not be abused.[28] Where a plaint was rejected for non-compliance with an order directing payment of deficit Court-fees, and it was found that the amount paid for the purchase of the necessary stamps had been misappropriated by the clerk, the Court was held to have inherent power to set aside its order rejecting the plaint and to restore the case to its original file.[29] No express order is necessary for extension of time under Ss. 148 and 149 of the Civil Procedure Code. An extension may be *inferred* from the fact that the Court has actually allowed a thing to be done beyond the prescribed time.[30]

46. NO RIGHT TO DEMAND FURTHER TIME IN CASE OF APPEALS.—The High Court of Bombay, has held, in *Achut* v. *Nagappa*,[31] that a memorandum of appeal stands on the same footing as a plaint for purposes of right to demand from the Court some further time, to be fixed according to the Court's discretion, to be allowed to him in order that he may make up the deficiency in the stamp. This view is based on the observation that S. 107 (2) of the Code, reproduces S. 582 of the old Code, and provides that the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Code on Courts of Original Jurisdiction in respect of suits instituted therein. This view is not shared by most of the other High Courts. The Patna High Court holds that S. 149 should not be construed in such a way as to nullify the express provision of S. 4 of the Court-Fees Act,[32] and that the Court is not bound to receive the appeal and give the appellant time to make good the deficiency[32] though time would be given where there is no negligence or laches on the part of the appellants and they have made an honest attempt to comply with the law.[33] The Madras High Court was not satisfied as to the correctness of the ruling in *Achut* v. *Nagappa*, that O. 7, R. 11, Civil Procedure Code is rendered applicable to memoranda of appeals, and that it is incumbent upon the Court to admit memoranda out of time where the conditions of the rule are complied with.[34] The Lahore High Court, held in *Lekh Ram* v. *Ramjidas*, that a Court would not grant time for a deficiency in Court-fees to be made up, unless it is satisfied that some grounds exist for the exercise of its discretion.[35]

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(28) 104 I.C. 527=1 Luck. 574=1927 Oudh 507.

(29) *Adit Prasad* v. *Rambarakh*, 91 I.C. 213=4 Pat. 180=1925 Pat. 435 (437).

(30) Chitaley's C.P. Code, p. 1505.

(31) 21 I.C. 337=38 Bom. 41=1914 Bom. 249.

(32) *Ramsahai* v. *Lakshmi Narayan*, 42 I.C. 675 (Pat.).

(33) *Amir Mandal* v. *Mohan Chandra*, 3 Pat. 337=80 I.C. 1030.

(34) *Akharaju Narayan* v. *Seshamma*, 26 I.C. 33=1915 Mad. 426.

(35) 57 I.C. 215 (Lah.)=1 Lah. 234.

The Allahabad High Court has held in *Brijbhukan* v. *Tota Ram*,[36] that the Appellate Court has full power to refuse to accept a memorandum of appeal when the Court-fee paid is reported to be insufficient, and that the concession under S. 149 cannot be claimed as of right. The Nagpur Judicial Commissioner's Court has also disagreed with the reasoning on which the Bombay decision is based,[37] and has held that an Appellate Court is not bound to give time for payment of additional Court-fees, and that there is a distinction in this connection between the powers of an Original Court under O. 7, R. 11 of Civil Procedure Code, when a plaint is written on insufficiently stamped paper and those of an Appellate Court when the appeal memorandum is insufficiently stamped. The view taken in Calcutta High Court, is in consonance with the view of Patna, Lahore, Madras and Allahabad High Court.[38] However, the Oudh Chief Court observed in *Deoraj* v. *Kunj Behari*, that the District Judge was not right in dismissing an appeal under O. 7, R. 11(*c*), Civil Procedure Code, without giving the appellant reasonable time to make good the deficiency, after deciding that the Court-fee paid was insufficient.[39]

47. PAUPER SUITS AND APPEALS.—(i) Order 33, of the Code of Civil Procedure provides that suit may be instituted in *forma pauperis*, subject to certain rules. A person, according to the definition is A "PAUPER," when he is *not possessed* of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is *not entitled* to property worth one hundred rupees other than his necessary wearing apparel, and the subject-matter of the suit.[40] It was observed, in *Jotindra Nath Chowdhry* v. *Dwarkanath Dey*,[41] that "the state derives a revenue from Court-fee stamps. There are persons whom it is thought right to exempt by reason of their poverty from payment in the first instance of Court-fees stamps and who are allowed to sue in *forma pauperis*", and *Rule* 10 provides that "persons who have been successful as paupers shall, so far as the subject-matter of their success is concerned, be liable to satisfy, out of what they recover, the amount of the fees which have been for a time, pending the decision of their suit, remitted to them." If the pauper fails in the suit, the amount of Court-fees due to Government becomes a first-charge on the subject-matter of the suit

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(36) 50 All. 980=118 I.C. 228=1929 All. 75; citing 42 I.C. 675 (Pat.); 1 Lah. 234; and 26 I.C. 33 (Mad.), in conflict with 21 I.C. 337=38 Bom. 41, *supra*; cf. 74 I.C. 757=1923 All. 349 (Power is reserved to Court under S. 149, which if not exercise would call for a remand for the purpose).

(37) *Atma Ram* v. *Kasturchand*, 124 I.C. 241=1930 Nag. 224.

(38) Per Suhrawardy, J., in *Jnanadasundari* v. *Madhab Chandra*, 1932 Cal. 482 (484, 485)=59 Cal. 388=138 I.C. 643.

(39) 124 I.C. 420 (422)=1930 Oudh 104=5 Luck. 474.

(40) *See* Explanation, to O. 33, R. 1, C.P. Code.

(41) 20 Cal. 111 (115).

(RULE 10); but even if the plaintiff fails in the suit, or is dispaupered, or where the suit is withdrawn or dismissed, the Court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the Court-fees which would have been paid by the plaintiff if he had been permitted to sue as a pauper (RULE 11).

(ii) Two Tests of Pauperism.—The explanation to R. 1, O. 33, Civil Procedure Code, furnishes two tests to determine the pauperism of a person, according as the law does or does not prescribe the payment of fee upon the plaint.[42] In the first place, where a claim requires a Court-fee of a certain amount, and the applicant is NOT POSSESSED OF MEANS to the extent of that amount, he is a pauper for the purpose of that suit.[43] The "subject-matter of the suit" may have to be taken in consideration with the question of "*means*", if the plaintiff or appellant, is in possession of the same.[44] If the "subject-matter of the suit," is not in the possession, or control of the plaintiff, it cannot be taken into consideration for the purposes of determining the plaintiff's *means*, with reference to first part of the explanation.[45] There is some conflict of opinion on the question, whether the pauperism of plaintiff is to be determined at the time when the application for leave to sue as a pauper is *made*, or *at the time of the hearing*.[46] *Secondly*, where no such fee is prescribed, the pauper must show that he is NOT ENTITLED TO PROPERTY WORTH ONE HUNDRED RUPEES.[47] The words "subject-matter of the suit" do not qualify the first part of the explanation, but apply only to cases where no specific fee is prescribed.[48] It should be noticed that a person may be *entitled to property*, but may never-

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(42) *Lillar Rahman* v. *Guzunfur Hossain*, 23 I.C. 974 (Cal.); also see *Chandan Singh* v. *Lakshman*, 90 I.C. 949 (950)=1925 Nag. 438 (439, 440); *Sheikh Badal* v. *Abdul Rahim*, 92 I.C. 785=1926 Nag. 273; In re *Mahalakhshimi*, 94 I.C. 337=1926 Mad. 567 (568); *Provash Chandra* v. *Municipal Commissioners*, 57 Cal. 980=125 I.C. 102=1930 Cal. 147 (149); and *Bai Balagadri* v. *Motilal*, 72 I.C. 224=47 Bom. 523=1923 Bom. 247.

(43) *Gangabai* v. *Shridhur*, (1906) 8 Bom. L.R. 642 (644).

(44) *Dwarkabai* v. *Sakharam*, 119 I.C. 697=1929 Nag. 319 (321) (Appeal by defendant, in possession of certain ornaments decreed in favour of the plaintiff).

(45) *Provash Chandra* v. *Municipal Commissioners*, 57 Cal. 980=125 I.C. 102=1930 Cal. 147 (149, 150); also see *Achalsingh* v. *Setti Juvan Das*, 75 I.C. 993=1924 Nag. 44 (46)—(Right to redeem property in suit); *Bhajai Ram* v. *Narain Devi*, 96 I.C. 830=1926 Lah. 642.

(46) *Bai Balagori* v. *Moti Lal*, 72 I.C. 224=47 Bom. 523=1923 Bom. 247 (248); *Fatma Bai* v. *Dossabhoy*, 34 Bom. 638=5 I.C. 688 (689)—(Deposit of a sum by defendant into Court to the credit of plaintiff, not a ground for rejection of application made); also see *Provash Chandra* v. *Municipal Commissioners*, 57 Cal. 980=125 I.C. 102=1930 Cal. 147 (149-150); *cf.* 10 Bom. 207 (210)—[Diss. in 5 I.C. 688 (689) and 72 I.C. 224, *supra*; and *Mudappa* v. *Rudramma*, 61 I.C. 958=1921 Mad. 97 (98) (Applicant subsequently ceasing to be pauper].

(47) *Savitri Thakurain* v. *Secretary of State*, 77 I.C. 611 (616).

(48) *Krishnabai* v. *Manohar*, 30 Bom. 593 (597); *Minaji* v. *Sitaram*, 81 I.C. 643 (646, 647).

theless be *not possessed of means* sufficient to pay Court-fees.[49] The word "MEANS" is intended to cover and include all forms of realisable assets which can be converted into cash and as such can be used for financing the litigation.[50] According to Judicial Commissioners Court of Nagpur, a mere contingent interest in property is not "means possessed" for purposes of O. 33, R. 1, Civil Procedure Code.[1] "What the law, therefore, wants the intending suitor to establish is the negation of the actuality of possession of means by him if he is seeking permission to sue in *forma pauperis*, and not the chance of eventuality, or of a mere possibility or contingency, much less of an expectancy on his part, *of getting in future* some means sufficient to enable him to pay the prescribed fee for his plaint."[2] Where a person applies to sue in *forma pauperis*, the burden of proving that the value of his property does not exceed the amount required for Court-fees lies (heavily) on him.[3]

(iii) Institution of suit or proceeding.—A suit not originally instituted in *forma pauperis*, may be allowed to be *continued* in *forma pauperis*.[4] The power of the Court to allow a suit to be *instituted* in *forma pauperis* includes the POWER TO ALLOW A SUIT TO BE CONTINUED AS A PAUPER SUIT after it has been commenced in the ordinary form.[5] And, although there is no provision in the Code, the defendant, on showing his poverty, has been allowed TO DEFEND THE SUIT AS A PAUPER.[6] A PETITION OF GRANT OF PROBATE is not a suit, in the ordinary acceptation of the term, though, if a caveat was entered, it would be changed into a suit. However, the provisions of this chapter have been held applicable to the petitions for probate, and may be availed of where an executor is not in possession of the property of his testator, and cannot get possession of it, and where he has not

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(49) *Kisan* v. *Manjai*, (105 I.C. 30=1928 Nag. 24, 27); *Ma Bok* v. *Maung Sein*, (128 I.C. 848=1930 Rang. 324, 325); cf. *Ram Prasad* v. *Jagtamba*, 88 I.C. 420=47 All. 872=1925 All. 547.

(50) *Lal Chand* v. *Mt. Pisto*, 110 I.C. 122=1928 271; also see *Nand Kishore* v. *Babhu*, 1929 Lah. 821 (mortgage in petitioner's favour is his "*means*").

(1) *Chandan Singh* v. *Laxman*, 90 I.C. 949=1925 Nag. 438 (439, 440).

(2) *Ibid.*

(3) *Nand Kishore* v. *Prabhu Dayal*, 1929 Lah. 821; also see *Sheikh Badal* v. *Abdul Rahim*, 92 I.C. 785=1926 Nag. 273; and *Gunia Bai* v. *Shanker Rao*, 104 I.C. 198 (199); cf. *Muhd. Husain* v. *Ajudhia Prasad*, 10 All. 467 (470) (Tends to approve of a peculiarly lenient standard of proof).

(4) *Nirmal Chandra Mookerjee* v. *Bhattacharjee*, 2 Cal. 130 (131); *Thompson* v. *The Calcutta Tramway*, 20 Cal. 319; also see *Revji Patel* v. *Sakharam*, 8 Bom. 615; and *Surendra Chandra* v. *Showdamini*, 141 I.C. 135 =1933 Cal. 238 (239); cf. *Selina Seehan* v. *Hafez Muhd.*, 1932 Cal. 685 (687)=136 I.C. 520 (in which the other authorities cited were doubted).

(5) *See* 2 Cal. 130 (131), *supra*, folld. in 20 Cal. 319; and in 1933 Cal. 238 (239); also in 8 Bom. 615; also see *Subbarao* v. *Venkataratnam*, 121 I.C. 857=53 Mad. 43=1922 Mad. 828 (829); and *Soliyappa* v. *Lakshmanan*, 54 I.C. 761 (Mad.).

(6) *Doorga Churn* v. *Nittokaly*, 5 Cal. 819=6 C.L.R. 120; *Hukumchand* v. *Kamalanand*, 33 Cal. 927 (932); also see *Nand Kishore* v. *Ram Golam*, 40 Cal. 955=18 I.C. 207 (208); cf. 54 P.R. 1905 and 8 Rang. 423.

himself the means of paying the necessary fee.[7] The privilege of instituting, maintaining, and continuing a pauper suit, without payment of Court-fees in the first instance, is PRIVILEGE PERSONAL to those persons who have no means of carrying on or continuing litigation, and it cannot be claimed by the representative of a pauper, unless he himself is a pauper,[8] and, where the applicant himself is proved to be a pauper he is entitled to the benefit of the rule, and the fact that he has co-heirs, relatives or guardian, or parents who are men of means is immaterial.[9] Where an application for leave to sue in *forma pauperis* is filed on behalf of a minor, by his next friend, the fact that the next friend is possessed of sufficient means of his own, will not disentitle the minor plaintiff from suing in *forma pauperis*.[10] The provisions of O. 33 are not applicable to proceedings under the Agra Tenancy Act (III of 1926), and the Madras Estates Land Act (I of 1908).[11]

48. PAUPER SUITS BY FIRMS, LEGAL REPRESENTATIVES, ETC.—The word "PERSON" occurring in the explanation to the rule, INCLUDES COMPANIES, OR ASSOCIATIONS OR BODIES OF INDIVIDUALS WHETHER INCORPORATED OR NOT.[12] The Madras High Court has held it to indicate a juridical person,[13] and the Rangoon High Court only takes it as meaning a natural person,[14] but even on this view, a firm can be considered to a "person".[15] According to the Madras High Court, a suit in *forma pauperis* can be continued, on the death of the plaintiff, by his legal representatives, even though the latter are possessed of property in their own right.[16] The Lahore High Court has conflicting decisions on the point.[17] The Bombay High Court, held in *Manaji* v. *Khandoo* that THE REPRESENTATIVE OF A PAUPER cannot continue the suit in *forma pauperis* if not a pauper himself,[18] and this view was accepted by the Madras High Court in *In re*

(7) In re Will of *Dawnbai*, 18 Bom. 237.

(8) *Manaji Rdjuji* v. *Khandoo Baloo*, 11 I.C. 724 (Bom.).

(9) *Mi Hla Min* v. *Mi Ket*, 8 I.C. 474 (475)=(1910) 1 U.B.R. 26.

(10) *Nemichand* v. *Kevalchand*, 80 I.C. 748=1924 Bom. 440 (441); *Nanibala* v. *Jamini Sundari*, 70 I.C. 919=1923 Cal. 656; *Ganeshdevi* v. *Mankaur*, 121 I.C. 381=1929 Lah. 746 (747); also see *Mt. Amirnon* v. *Secretary of State*, 58 I.C. 445 (446) (Cal.); cf. *Chando Mal* v. *Tajulbai*, 1933 Sindh 82 (84) (means of next friend considered); also see *Sharifulnessa* v. *Nazim*, 44 I.C. 723 (Pat.).

(11) Chitaley's C.P. Code, p. 2540.

(12) *See* General Clauses Act, X of 1897.

(13) *Sivagami Ammal* v. *Gopalaswami*, 87 I.C. 372=1925 Mad. 165 (766).

(14) *Mitra* v. *Corporation of Royal Exchange Assurance*, 126 I.C. 650 =1930 Rang. 259.

(15) *Cassim and Sons* v. *Abdul Rahman*, 127 I.C. 175=1930 Rang. 272.

(16) *Ammakannu* v. *Damodra*, 109 I.C. 258=1928 Mad. 66; (citing *Sivagami* v. *Gopalaswami*, 87 I.C. 372=1925 Mad. 765; *Perumal* v. *Tirumal*, 45 I.C. 164=41 Mad. 624; *cf.* In the Will of *Dawlee*, 18 Bom. 237.

(17) *Sher Singh* v. *Antar Singh*, 104 I.C. 347=1927 Lah. 665; contra *Nanak Chand* v. *Hamam Singh*, 125 I.C. 611=1930 Lah. 735 (736)—(Legal representative can sue as pauper).

(18) 11 I.C. 724=36 Bom. 279.

Radhakrishna Aiyar,[19] but dissented from in *Sivagami* v. *Gopalaswami* noticed above.[20] The High Court of Allahabad holds that THE OFFICIAL RECEIVER IN INSOLVENCY, is entitled to continue the suit in *forma pauperis*, as the insolvent might have done,[21] and, likewise, the Madras High Court has taken the view that THE LIQUIDATOR OF COMPANY though not a pauper himself may file a suit in *forma pauperis* on behalf of a pauper company.[22] The Calcutta High Court held in *Lalit Mohan* v. *Satish Chandra* that a person cannot sue or continue a suit in representative capacity, unless and until it was shown that he himself is a pauper.[23] But THE CHARACTER OF A PERSON SUING IN A REPRESENTATIVE CAPACITY HAS TO BE DISTINGUISHED FROM HIS PERSONAL CAPACITY,[24] and the legal representative may be allowed to sue as a pauper, even if he has sufficient personal property of his own, provided he has not come into possession of sufficient means in his character as legal representative.[25] No doubt leave to sue in *forma pauperis* is a personal right,[26] but the Madras High Court seems correct in observing that "the mere fact that it is a personal right is no reason for holding that his legal personal representative loses that right."[27]

49. LIMITATION WHEN PAUPER APPLICATION IS GRANTED OR REFUSED.—WHERE AN APPLICATION TO SUE IN FORMA PAUPERIS IS GRANTED, there can be no doubt that the suit is deemed to be instituted on the *date of the presentation of the application*, and not on the date when the applicant is *allowed* to sue as a pauper.[28] Accordingly, where an application to sue as pauper was presented under O. 33, R. 3, on a date when the old Act was in force, and the applicant was allowed to sue as a pauper, under O. 33, R. 7, on a date when the new Act (Amending Act, Madras, 1922) was in force, the plaint was regarded as "*filed*", and the suit instituted when his application for leave to sue as a pauper was made: and the Court-fee leviable from him under R. 10, O. 33 of the Civil of Procedure Code, was held payable under the law in force on the date on which the application for leave to sue as a pauper was made, and not the law in force on the date of the decree.[29] But, WHERE THE APPLICATION TO SUE IN FORMA

(19) 88 I.C. 91=1925 Mad. 819.

(20) See f-n. (16), above.

(21) *Muhd. Zakki* v. *Municipal Board*, 47 I.C. 577 (All.).

(22) *Perumal* v. *Tirummal*, (45 I.C. 164=41 Mad. 624).

(23) 33 Cal. 1163 (1168); also see

(24) *Mahia* v. *Sheikh Sut Kari*, 100 I.C. 264=1927 Cal. 309 (310).

(25) *Sivagami* v. *Gopalaswami*, 87 I.C. 372 (374)=1925 Mad. 765. (766-767); also see *Ammakannu* v. *Damodra*, 109 I.C. 258=1928 Mad. 66 (67).

(26) *Farzaud Ali* v. *Amir Haider*, 26 I.C. 714.

(27) *Sivagami* v. *Gopalaswami*, supra, 87 I.C. 372 (374).

(28) *Seetaram* v. *Goluknath*, (1862) Marsh, 174; and *Dhavle* v. *Samvat*, (1867) 4 Bom. H.C. A.C.J. 39 (under the Code of 1859); also see *Khem Karan* v. *Har Dayal* 4 All. 37 at p. 39; refers to Exp., S. 4, of Act XV of 1877; also see *Kaman Mada* v. *Mallai, Etc.*, 91 I.C. 302=1926 Mad. 159.

(29) 91 I.C. 302=1926 Mad. 159, *supra*.

PAUPERIS IS REFUSED, the proceedings came to an end, and if the applicant thereafter brings a regular suit, in the same matter on payment of the Court-fees prescribed, such suit dates, for the purposes of limitation, from the time of filing the plaint, and not from the date of the application for leave to sue as a pauper.[30] However, in cases of this type, the Court may grant time for payment of the Court-fees on the plaint, or on appeal under S. 149, Civil Procedure Code, and if the Court-fee is paid within the time so granted, the suit would be deemed to be instituted on the date of the presentation of the *application*.[31]

50. **LIMITATION WHEN APPLICATION IS VOLUNTARILY CONVERTED INTO A PLAINT ON PAYMENT OF COURT-FEE**.—When during the *pendency* of an application to sue as a pauper, the applicant voluntarily pays the full Court-fee in respect of the plaint, or pays a part of the Court-fee, and abandons the rest of the claim, does the institution of the suit date back to the date of the presentation of the application, and if so, under what circumstances? Their Lordships of the Privy Council, observed in *Skinner* v. *Orde*,[32] that the petition to sue in *forma pauperis* contains all that a plaint is required to do, and *plus* these, a prayer that the plaintiff may be allowed to sue in *forma pauperis*. The Code of Civil Procedure provides what shall happen if the prayer of the petition be granted, and it also provides what shall be the effect of a rejection of the petition, "but this case is one which the statute has not in terms provided for," and their Lordships add, "the intention of the statute evidently was that, UNLESS THE PETITION WAS REJECTED, as it contained all the materials of the plaint, IT SHOULD OPERATE AS A PLAINT WITHOUT THE NECESSITY OF FILING A NEW ONE."[32] Their Lordships did not find anything in the Act "which requires that in such a state of things the petition of plaint shall be rejected altogether, and the plaintiff be compelled to commence *de novo*"; and they "did not see their way to the middle course followed by the Court in holding that the petition was converted into a plaint from the date of the payment of the fees."[32] "To be logical, the Court should have rejected it altogether. The petition of plaint was placed on the file and numbered (on the date of the application to sue in *forma pauperis*), and this is the plaint that is allowed to go." Their Lordships concluded by observing, that "although the analogy is not perfect, what has happened is not at all unlike that which so commonly happens in practice in the Indian Courts, that a wrong stamp is put upon the plaint originally, and the proper stamp is afterwards affixed. The plaint is not converted into a plaint from that time only, but remains with its original date on the

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(30) *Naraini Kuar* v. *Makhan Lal*, 17 All. 526 (528); *Keshav Ramachandra* v. *Krishna Row*, 20 Bom. 508 (510); *Aubboya* v. *Bisseswari*, 24 Cal. 889 (891); *also see* 22 Bom. 849 (852); *cf.* 84 P.R. 1904.

(31) *See* Paras. 44 and 45, *ante*; also see *Bai Ful* v. *Memor Bhai*, 22 Bom. 849; *Durgacharan* v. *Doobiram*, 26 Cal. 925; *Diyal Das* v. *Sunder Das*, 65 I.C. 741; *Nellavudian* v. *Subramania Pillai*, 38 I.C. 617 (Mad.).

(32) 2 All. 241=6 I.A. 126=4 C.L.R. 331.

file of the Court, and becomes free from the objection of an improper stamp when the correct stamp has been placed upon it.''[32] This case, then, is the leading authority on the point that WHERE THERE IS NO QUESTION OF ANY FRAUD IN THE MATTER, THE SUIT WILL BE DEEMED TO BE INSTITUTED, ON THE DATE OF THE APPLICATION TO SUE IN *forma pauperis*, AND NOT ON THE DATE, WHEN THE COURT-FEES ARE PAID. This authority was distinguished in *Abbasi Begam* v. *Nanhi Begam*,[33] on the ground that ''it was decided on a prior Code of Civil Procedure'', and ''apparently to some extent on the belief that there was a practice in the Courts in India which justified what had taken place in that case'' but it was followed in *Janak Dhary* v. *Janki Koer*,[34] which discusses, and dissents from the view taken by the Allahabad High Court in the case of *Appasi Begam* v. *Nanhi Begam*.[33] TheCalcutta case, and the Privy Council Authority, have been followed by the Punjab Chief Court,[35] by the Madras High Court,[36] and by the Judicial Commissioner' Courts of Nagpur,[37] and Oudh.[38] The view taken by the Madras High Court, in *Alayakammal* v. *Subbaraya*,[36] is that ''the payment of stamp duty, relates back to the date of the presentation of the plaint, as a proper plaint, *in the absence of any evidence to show that there was fraud in putting in the plaint* without a stamp,'' and to the same effect is the view held by the Oudh Judicial Commissioner's Court in *Wali Muhd.* v. *Daulatun Nissa*[38] ''where a plaintiff applies in good faith for leave to sue as a pauper but, on his application being opposed, pays in the necessary Court-fee pending an enquiry into pauperism, limitation runs against him only up to the date of filing the application, and not up to the date of paying in the Court-fee.'' It has been observed by the Nagpur Judicial Commissioner's Court,[37] that ''the withdrawal of the application, which is involved in subsequent payment of the Court-fees, cannot be regarded, as equivalent to a refusal of permission by the Court such as is contemplated by R. 7 (3) of O. 33 of the Code. The Allahabad High Court had evidently regarded the payment as an admission that the applicant was not a pauper at the time he put in the original application. But the payment is an admission of nothing more than that the applicant is, at the time of payment, in possession of means to make it, and is no longer a pauper, and the withdrawal is a submission to an order of dispauperisation under R. 9 (*b*), not to one of refusal of his original petition.''[37] The Rangoon High Court has followed *Skinner* v. *Orde*, but has distinguished it, in *Sorebhal* v. *Dial Chand*[39] on the ground that in the particular case, the

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(33) 18 All. 206=16 A.W.N. (1896) 33.

(34) 28 Cal. 427 (430, 431).

(35) *Raja Ram* v. *Tilokchand*, 59 P.R. 1903.

(36) *Alayakammal* v. *Subbaraya*, 28 Mad. 493; also *Maria Thangathammal* v. *Iravatheswara*, 28 I.C. 504.

(37) *Gopikisan* v. *Bulapidas*, 65 I.C. 506.

(38) *Mali Muhammad* v. *Daulat-un-nissa*, 37 I.C. 921.

(39) 74 I.C. 835=1 Rang. 196=1923 Rang. 256.

application for leave to sue as a pauper had been rejected in a former suit, and the second application to sue as a pauper was one in which all question of fraud was not negatived as in the case before their Lordships of the Privy Council. The Madras High Court,[40] has very recently, again laid down the rule as follows:—"Where the plaintiff asks for leave to sue in *forma pauperis*, the period of limitation ceases to run from the date of the presentation of such application" adding that "without clear proof that he was not a pauper on the date of the application for leave to sue in *forma pauperis* it cannot be said that he purposely avoided paying the Court-fee on the plaint, and that the plaint he had put into Court was not a proper plaint". The rule is, also laid down by the Nagpur Judicial Commissioner's Court,[41] in about the same terms. "A plaintiff who institutes a suit as a pauper and subsequently pays up the Court-fee, will not be entitled, in computing the period of limitation, to deduct the period spent in prosecuting the pauper application if, in the particular case, the pauper application is held to have been made fraudulently or *mala fide.*"

Computation of fees payable in certain suits—

7. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—

Synopsis.

51. Legislative changes.
52. Local amendments.
53. Modes of valuation for purposes of Court-fees.
54. Valuation for purposes of jurisdiction.
55. Principles for the determination of Court-fee valuation.
56. Objections as to valuation and Court-fees.

Comments.

51. **LEGISLATIVE CHANGES.**—The words "and the provisions of the Code of Civil Procedure, 1859, S. 31, shall apply as if for the word 'claim' the words 'relief sought' were substituted" at the END OF THE FOURTH PARAGRAPH have been repealed by Act XII of 1891. In PARAGRAPH XI, the clause (*cc*) was inserted by S. 2 (1) of the Court-Fees Amendment Act VI of 1905. The words "immoveable property" in Cl. (*e*), and in the last section of this paragraph have been substituted for the word "land", by S. 2 (2) of the Court-Fees Amendment Act, III of 1905.

52. **LOCAL AMENDMENTS.**—The Several paragraphs of this section have been amended in Madras, Bombay, Behar and Orissa in 1922, under the Devolution Act (Act XXXVIII of 1920) also in Punjab. The amendments are noticed under different paragraphs. By Act V of 1922 (Madras) suits relating to Religious endowments, and suits relating to Public Nuisance or Public Charities (under S. 91 or S. 92, Civil Procedure Code), are excepted from this section and are provided for in Sch. II, Art. 17 (3), (Madras).

(40) *Veerasami Naidu* v. *Sivagurunatha*, 86 I.C. 234=21 L.W. 111.
(41) 112 I.C. 875 (Nag.).

53. MODES OF VALUATION FOR PURPOSES OF COURT-FEE.—"THE WHOLE OF S. 7 IS A HANDLE FOR THE APPLICATION OF SCH. I OF THE SAID ACT." "Section 7 states the various processes by which values in different suits are to be arrived at, and the schedule then applies the proper Court-fees to those values." "Section 7 lays down the method of reaching the value of certain claims, as a preliminary to finding the Court-fees payable in respect thereof."[42] THE SCHEDULE LAID DOWN FOR THE TAXATION OF PLAINTS AND MEMORANDA OF APPEALS is that suits and memoranda of appeals are classified according to the subject-matter, or the subject-matter in dispute, or the nature of the relief claimed. There is the test of ACTUAL OR MARKET VALUE in suits of a certain nature falling within Cls. (1), (3), 5 (*d*) and (*e*); and there is a STATUTORY PRESCRIBED VALUATION, for suits falling within Cls. (2), 5 (*a*), (*b*) and (*c*), 6, 7, 8, 9, 10 and 11; and unprescribed valuation, at PLAINTIFFS' OPTION in cases falling with Cl. (4) of the section. In these last type of cases, "it would generally be impossible to name any except a fancy value,"[43] and the fixing of the valuation is left to plaintiff's option. "SCHEDULES I AND II OF THE ACT, endeavour to give a comprehensive classification of the various kinds of suits with reference to these heads of classification. The schedules also provide that the proper fee payable on some documents shall vary according to the Court in which they are filed and that in regard to others there shall be no such variance." Again in Sch. II it is declared that the plaints and appeals in the suits therein specified shall bear the fixed fees prescribed, while in Sch. I are specified various suits in which the plaints and appeals shall bear an *ad valorem* fee."[44]

54. VALUATION FOR PURPOSES OF JURISDICTION—(1) Court-fee value not a guide for jurisdiction.—The mode of computing the value of the subject-matter of a suit as provided by Act VII of 1870 was intended to be applicable only to determining the amount of Court-fees to be paid, but not to other purposes, *e.g.*, to the question of the jurisdiction of the Court.[45] THE COURT-FEES ACT, WHICH WAS FRAMED FOR PURELY FISCAL PURPOSES, IS NOT AVAILABLE AS A GUIDE IN DETERMINING A QUESTION OF JURISDICTION.[46] "The law may well lay down, for purposes of revenue, certain fixed rules for the valuation of suits; but obviously such valuation cannot be accepted as a criterion of matter of fact, such as the actual amount of value of a claim, upon which the jurisdiction of a Court depends."[47] This view has been

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(42) *Dhirajsingh* v. *Raja Ram*, 8 I.C. 1125=6 N.L.R. 164.

(43) *Manohar Ganesh* v. *Ramcharudas*, 2 Bom. 219 (228).

(44) Per Mullick, J., in *Krishna Mohan* v. *Raghunandan*, 4 Pat. 336 (P.C.)=1925 Pat. 65=87 I.C. 137 (147) (F.B.).

(45) *Jeebraj Singh* v. *Inderjeet Mahton*, 18 W.R. 109.

(46) *Bai Makhor* v. *Bulabtu Chaku*, 1 Bom. 538 (541).

(47) *Ibid.*, 1 Bom. 538 (541), citing *Baboo Lakraj Roy* v. *Kashya Singh*, 1 I.A. 317; and *Thiagaraja* v. *Ramanuja*, 6 M.H. C.R. 151. (F.B.); also see *Dayachand Nenchand* v. *Hemchand*, 4 Bom. 515 (F.B.).

followed in a later Bombay ruling holding that "the rules contained in the Court-Fees Act are not to be taken as necessarily a guide in determining the value of the subject-matter of a suit for any purposes for which the Act does not provide; as, for example for purposes of jurisdiction."[48] Similarly, the Calcutta High Court has held, that the valuation of the suit for the purposes of stamp duty, and the valuation of the subject-matter of the suit for the purpose of determining the jurisdiction of the Court in appeal, are two different things. The value for purposes of assessing the Court-fee payable on the plaint or petition of appeal, is, for the sake of convenience, fixed by certain rules which determine an artificial value for purposes of the stamp-revenue. The value of the subject-matter of a suit or appeal, on which depends the jurisdiction of the several grades of Civil Courts, is the actual value of the property in litigation.[49]

(2) Methods of valuation under suits valuation Act.—THE VALUE FOR PURPOSES OF JURISDICTION IS DETERMINED BY THE SUITS VALUATION ACT, (ACT VII OF 1887). This Act consists of two parts. Part I prescribes the method of valuing suits relating to lands. SECTION 3 of the said Act provides that the Local Government may make rules for determining the value of land for purposes of jurisdiction in suits mentioned in S. 7 paragraphs (v), (vi) and (x), Cl. (*d*) of the Court-Fees Act. They are suits for possession of lands, gardens, etc., to enforce right of pre-emption, and for specific performance of an award. SECTION 4 relates to the valuation of suits coming under Cl. (iv) of S. 7 of the Court-Fees Act. These Ss. 3 and 4 are to be found in Part I; and there are Ss. 8 and 9 in Part II. Under S. 8, OF THE SUITS VALUATION ACT, the value of a suit for computation of Court-fees, and the value for purposes of jurisdiction shall be the same in suits other than those referred to in S. 7, paragraphs V, VI, IX and X (*d*) of the Court-Fees Act[50] Generally, the amount of the claim or the actual value of the property claimed determines jurisdiction,[1] except in certain cases covered by S. 8 of the Suits Valuation Act, in which the value for Court-fees controls the valuation for purposes of jurisdiction, and must be first fixed, and the same must be afterwards adopted for jurisdiction.[2] By S. 9 OF THE SUITS VALUATION ACT, power is

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(48) *Rupchand Khemchand* v. *Balvant Narayan*, 11 Bom. 591 (595) —per Birdwood, J.—*Dayaram Jagjivan* v. *Gadhandas Dayaram*, 31 Bom. 73 (77)—(the valuation of suits for purposes of jurisdiction is distinct from their valuation for the fiscal purpose of Court-fee); and *Maung Kyaw Dun* v. *Maung Kyaio*, 1 L.B.R. 96 (97).

(49) 5 Cal. 489 (492, 493)=(*Ankbil Chander* v. *Mohiny Mohandas*); also see *Kirty Churn* v. *Ammath*, (8 Cal. 757=11 C.L.R. 95)—(Partition suits —for purposes of jurisdiction, the Court should be guided by the value of property in suit, but the amount of the stamp fee should be governed by a different principle); and *see* 15 Cal. 104 and 19 Cal. 96.

(50) *Dayaram* v. *Gordhandas*, 31 Bom. 73 (77).

(1) *Kuppu Chetti* v. *Chidambara*, (1866) 3 M.H.C.R. 170.

(2) *Silendranath* v. *Ramchandra*, 66 I.C. 268=1921 Cal. 84 (85); also see *Rachappa Subrao* v. *Shidappa*, 43 Bom. 507=50 I.C. 280=46 I.A. 24 (P.C.); and *Chelasami* v. *Anne Brahmayya*, 91 I.C. 572=1925 Mad. 1223.

given to the High Court, following the procedure therein described, to frame rules in cases not covered by paragraphs V, VI and X(*d*) of S. 7 of the Act, when THE SUBJECT OF SUITS IS NOT CAPABLE OF SATISFACTORY VALUATION.[3] Suits under S. 7 (iv), or Sch. II, Art. 17, relating to land or to an interest in land shall adopt a valuation not exceeding that determined under rules framed under S. 3 of the Suits Valuation Act, regarding which power has already been given to the Local Government in consultation with the High Court.

(3) Suits falling under S. 8 Suits Valuation Act—Arbitrary valuation by plaintiff.—In SUITS FOR ACCOUNTS AND ADMINISTRATION, falling under S. 7 (iv) (*f*), of the Court-Fees Act, the plaintiff must state the amount at which he values the relief sought for purposes of Court-fees, and this value also determines the value for purposes of jurisdiction.[4] Similarly, in SUITS FOR A DECLARATION WITH CONSEQUENTIAL RELIEF, OR INJUNCTION SUITS falling within the scope of S. 7 (iv) (*c*), of the Court-Fees Act, the Court is bound by the plaintiff's valuation in the plaint for purposes of Court-fees, which is also to be taken as the value of suit for purposes of jurisdiction, by virtue of S. 8 of the Suits Valuation Act.[5] Where the SUIT IS TO ENFORCE A

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(3) *Aklemunnessa* v. *Mahomed Hatan*, 31 Cal. 849; and *Zair Hussain* v. *Khurshed Jan*, 28 All. 545.

(4) *Muhd. Abdul Wajid* v. *Ala Bux*, 47 All. 534=86 I.C. 1055; *Govindas* v. *Dayabhai*, 9 Bom. 22 (24); *Khushal Chand* v. *Nagindas*, 12 Bom. 675 (677); *Balvantrao* v. *Bhimashankar*, 13 Bom. 517; *Bhagwantrai* v. *Jivandas*, 19 Bom. 198 (201); also see *Sidha Sardarsingh* v. *Ganpatsingh*, P. J., (1892), p. 144, *sub nom.*=17 Bom. 56; *Bai Hiragaveri* v. *Gulabdas*, 22 I.C. 71 (72)—(Suit for winding up of a partnership and for accounts); *Khatija* v. *Adam Husenally*, 29 I.C. 949 (950)=39 Bom. 545; *Dhani Ram* v. *Bhagiratti*, 22 Cal. 692 (708), following; *Ludubhai* v. *Revichand*, 6 Bom. 143; *Sasi Bhusan* v. *Chandra Nandy*, 28 I.C. 835 (837) (Cal.); also see *Butna Ram* v. *Rahmatullah*, 131 I.C. 337 (1); *Thipikesh* v. *Mela Ram*, 94 I.C. 650=1926 Lah. 242; and *Bura Mal* v. *Tulsi Ram*, 107 I.C. 609=1927 Lah. 890=9 Lah. 366; *Suraiya Gadar* v. *Qudsia Begam*, 24 I.C. 643 (660)—(Administration suit); and, *Shijhuddin* v. *Aishabi*, 26 I.C. 342 (343)=100 P.R. 1914 (Suit for administration); *Binjraj* v. *Kisanlal*, 1933 Nag. 127 (*a*) =141 I.C. 277 (Suit for partnership accounts); also see 1933 Mad. 330.

(5) *Jageswara* v. *Durga Prasad*, 24 I.C. 679=36 All. 500; *Manni Lal* v. *Mahur Radhey Gopal*, 87 I.C. 190=147 All. 501=1925 All. 602; *Gulabsinghji* v. *Lakshmansinghji*, 18 Bom. 100 (103); *Sunderbai* v. *Collector*, 52 I.C. 897=43 Bom. 376=1918 P.C. 135 (136); *Dayaram Jagjivan* v. *Gordhandas*, 31 Bom. 73; *Balkrishna* v. *Jankibai*, 56 ..C. 340 (341); relied in *Tyabally* v. *James Finlay*, 80 I.C. 969 (Sind)=1924 Sind 105 (2)=44 Bom. 331; *Hari Sankar* v. *Kali Kumar*, 32 Cal. 734 (738); *Rajkrishna Dey* v. *Bepin Beharey*, 17 I.C. 162 (163)—(Plaintiff not free to choose capriciously the forum of trial or appeal); *Harihar* v. *Shyamlal*, (21 J.C 404 = 40 Cal. 615,—Court to see that proper value is put; *also see* and cf. *Rajabaladasi* v. *Radhika Charan*, 79 I.C. 982=1924 Cal. 969; *Jogendra Nath* v. *Toriantnessa*, 62 I.C. 685=1922 Cal. 242; also *Malamal* v. *Gurdial*, 5 P.R. 1887 (Suit for closing doorway); *Daya Singh* v. *Rahia Ram*, 26 P.R. 1887 (Suit for removal of wall); *Shabbaz Khan* v. *Dosa*, 163 P.R. 1888 (Suit for removal of certain dams); and, *Thanda Singh* v. *Gulabmal*, 1933 Lah. 246; *Parumal* v. *Motumal*, 17 I.C. 44 (45) (Sindh)—(Suit for rent, declaration and injunction); *Arunachalam* v. *Rangasami*, 28 I.C. 79 (81)=38 Mad. 922; *Chelasami* v. *Chelasami*, 18 I.C. 363 (Mad.); *Maung Noe* v. *Maung Kha Pu*, 1933 Rang. 40.

RIGHT TO A SHARE IN A JOINT FAMILY PROPERTY falling under S. 7 (iv) (*b*), of the Court-Fees Act, the plaintiff can value it as he pleases, for purposes of Court-fees, and the value for purposes of jurisdiction is also identical.[6] A SUIT FOR THE RECOVERY OF MONEY DUE ON A MORTGAGE, is valued for purposes of Court-fee on the amount claimed and this also determines the value of such a suit for the purposes of jurisdiction, under S. 8 of the Suits Valuation Act.[7] The provisions of S. 8 of Act VII of 1887 apply to appellate Courts as well as to Courts of first instance.[8] Where according to law values for purposes of Court-fees and jurisdiction should be identical, it is not open to the plaintiff to put a higher valuation on the plaint for purposes of jurisdiction and thereby obtain an adjudication from a superior Court, and to put a lower one for purposes of Court-fees.[9]

(4) Statutory prescribed valuations.—The valuation for jurisdiction in PRE-EMPTION SUITS has not been provided by the Suits Valuation Act. Under S. 3 of the Suits Valuation Act, the Local Governments have been empowered to frame rules for valuing such suits, and rules have, accordingly, been made in the Punjab.[10] As regards pre-emption suits in respect of revenue-paying lands, the value of the suit is reckoned at 30 times the *Jama*,[11] and where the property in suit is a house, the market-value thereof, as given by the plaintiff, is the value for purposes of jurisdiction.[12] In Bengal, the value of the subject-matter of pre-emption determines the jurisdiction, under the Bengal Civil Courts Act, VI of 1871.[13] In Madras, under S. 14 of the Madras Civil Courts Act, 1873, the value is that fixed under S. 7 (v) of the Court-Fees Act, for a suit for possession of the land ought to be pre-empted.[14] It has been held by the Oudh Judicial Commissioner's Court, that in a pre-emption suit the jurisdiction of the Court is to be decided by the valuation set forth by the plaintiff in the plaint and not by the price set out in the sale-deed upon which the suit for pre-emption is based.[15] In SUITS FOR

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(6) *Chelasami* v. *Chelasami*, 18 I.C. 363 (Mad.).

(7) *Jankidas* v. *Badri Nath*, 2 All. 698 (704); *Kashinath* v. *Ganpatrao*, 18 Bom. 696 (698).

(8) *Bai Varunda Lakshmi* v. *Manegaveri*, 18 Bom. 207.

(9) *Kandhaiya Ojha* v. *Jagrani Kuer*, 79 I.C. 358=46 All. 419=1924 All. 597; *Shri Ram* v. *Dataram Munshiram*, 70 I.C. 852=1922 Sind 20; *also see* f.-n. (5) above.

(10) *See* Rules and Orders, Vol. III, p. 83.

(11) *Fata* v. *Khan Bahadur*, 46 P.R. 1908; *Mohd. Afzal* v. *Nandlal*, 16 P.R. 1908.

(12) *Imam Din* v. *Gulam Mahomed*, 101 P.R. 1900; *Durgasingh* v. *Bisheshar Dyal*, 24 All. 218 (225, 226)—(Indigo factory is a house, not land).

(13) *Anjud Singh* v. *Depun Singh*, 3 B.L.R. (App.) 143=14 W.R. 230 Note; also see *Naun Singh* v. *Rash Behary*, 13 Cal. 255 (256).

(14) *Narayna Nair* v. *Cheria Kathiri*, 41 Mad. 721=45 I.C. 89.

(15) *Baldeo Prasad* v. *Har Ratan*, 9 I.C. 414; citing *Thakur Sheodutsingh* v. *Bishennath Singh*, 6 O.C. 255; also *Jag Lal* v. *Har Narain*, 10 All. 524; *Mahabir* v. *Behari*, 13 All. 320; and *Mahdo Das* v. *Ramji*, 16 All. 286.

REDEMPTION AND FOR FORECLOSURE, which are expressly excepted from the operation of S. 8, Suits Valuation Act, the value for jurisdiction is determined by the *principal amount of mortgage*, according to the High Courts of Allahabad and Madras,[16] but but according to other High Courts, it is the *amount due on the mortgage* which determines jurisdiction in such cases.[17]

(5) Actual or market-value.—In SUITS FOR PARTITION, AND SEPARATE POSSESSION OF THE PLAINTIFF'S SHARE, where the plaintiff is out of possession, the value for jurisdiction is the value of plaintiff's *share* claimed,[18] and, where the plaintiff, while in *joint possession* of the suit properties, claims a partition of his share, the value of the entire property, and not merely the share of the plaintiff, will be the value of the suit for purposes of jurisdiction.[19] The value of a SUIT TO ESTABLISH THE VALIDITY OF CHARGE UPON A PROPERTY is the amount of the charge or the value of the property whichever is less.[20] The value of a SUIT FOR ESTABLISHING OCCUPANCY RIGHTS AND FOR POSSESSION THEREOF is that of the interest claimed, and not that of the entire interest in the land.[21] A SUIT BY ONE SHAREHOLDER TO SET ASIDE A SALE OF THE PROPERTY held by several shareholders is to be valued for purposes of jurisdiction according to the value of the entire property, although the plaintiff asks for possession of his share alone.[22]

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(16) *Kubair Singh* v. *Atmaram*, 5 All. 332; *Amanat Begam* v. *Bhajanlal*, 8 All. 438 (442, 443); *Kedar* v. *Matabdal*, 1 I.C. 703=31 All. 44; also see *Kalian Das* v. *Nawal Singh*, 1 All. 620; *Gobind Singh* v. *Kallu*, 2 All. 778 (780); *Bahadur* v. *Nawabjan*, 3 All. 822 (824); and *Mana Vikrama* v. *Suryanarayana*, 5 Mad. 284 and 287 (Note), (289); and *Mohd. Jalaldeen* v. *Vijaysuami*, 39 Mad. 447=28 I.C. 624 (625); also see and cf. *Jaswant Ram* v. *Moti Ram*, 1926 Lah. 376=7 Lah. 570 (F.B.).

(17) *Rupchand* v. *Balwant*, 11 Bom. 591 (594); *Ramchandra* v. *Janardan*, 14 Bom. 19 (23); also *Saroda Sundari* v. *Akramennessa*, 51 Cal. 737=78 I.C. 747=1924 Cal. 783 (785); also *Jaswant Ram* v. *Moti Ram*, 7 Lah. 570=96 I.C. 890=1926 Lah. 376 (378); and see *Nana* v. *Mulchand*, 21 I.C. 918 (919)=9 N.L.R. 161; and *Mahatha Long Singh and others* v. *Bhishun Lal Singh*, 1933 Pat. 625 (1).

(18) *Sheo Singh* v. *Baldeo Singh*, 25 All. 277 (279); *Wajuddin* v. *Waliullah*, 24 All. 381 (382); *Hikmat Ali* v. *Waliulnessa*, 12 All. 506 (509); *Dagdu* v. *Totaram*, 33 Bom. 658=4 I.C. 243; *Motibai* v. *Haridas*, 22 Bom. 315 (316); *Baidyanath* v. *Makhan Lal*, (17 Cal. 680, 683); cf. *Kirtee Chunder* v. *Annath*, 13 C.L.R. 253; also see *Joynath* v. *Lall Bahadoor*, 8 Cal. 126 (128); and *Khansu Bibi* v. *Syed Abba*, 11 Mad. 140 (141); *Vydianatha* v. *Subramaniya*, 8 Mad. 235 (236); *Chinnaswami* v. *Karuppa*, 21 Mad. 234 (236); *Krishnaswami* v. *Kanakasabai*, 14 Mad. 183 (184); *Chakrapani* v. *Narsingrao*, 19 Mad. 56 (59); *Narayanan* v. *Narayanan*, 15 Mad. 69 (70); *Velugoundan* v. *Kumaravelu*, 20 Mad. 289 (292); and *Khilanda* v. *Nanda*, 29 I.C. 766 (767) (P.C.); *Ballamal* v. *Bhupamal*, 110 P.R. 1888 (F.B.); *Ramayya* v. *Subrayadu*, 13 Mad. 25 (27).

(19) *Biraj Mohini* v. *Chintamani*, 3 C.L.J. 197 (198)=10 C.W.N. 565, foot-note; *Edward Dalgleish* v. *Ramdhary Sahu*, 4 C.L.J. 509; *Bhagwat* v. *Pasupatti*, 3 C.L.J. 257 (258)=10 C.W.N. 564; *Rajam Kanta* v. *Rajabala*, 52 Cal. 128=85 I.C. 870=1925 Cal. 320.

(20) *Krishnamachariar* v. *Srinivasa*, 4 Mad. 339 (341).

(21) *Upendra* v. *Sat Konridhar*, 23 I.C. 964 (965).

(22) *Unnoda Pershad* v. *Erskine & Co.*, 21 W.R. 68 (70)=12 B.L.R. 370.

(6) Cases where satisfactory valuation is not possible.— In the absence of any rules framed by the High Courts, the plaintiff's valuation should be accepted as determining jurisdiction, according to the majority of the High Courts, *viz.*, the Allahabad,[23] Bombay,[24] and Calcutta,[25] High Courts. According to the Madras High Court,[26] "THE GENERAL PRINCIPLES DEDUCIBLE FOR VALUATION FOR PURPOSES OF JURISDICTION where no special method of valuation has been provided by statute would seem to be (1) that where the subject-matter of a suit is wholly unrelated to anything which can be readily stated in definite money terms, then the plaintiff, having to put some money-value for the purpose of jurisdiction must put a more or less arbitrary value, and, there being no factors in the case from which the Court can say his valuation is wrong, or dishonest the Court will accept that valuation,[27] and (2) that where the subject-matter is so related to things which have a real money value that the relief asked for will affect these, then the value of the suit for the purpose of jurisdiction is to be taken as the market-value of the property affected, such for example, as a suit for a declaration of fishery rights."[28] But it is the market-value of the *whole* of the property affected and not merely the plaintiff's share.[29] In applying these principles, it would be noticed that in a SUIT FOR RESTITUTION OF CONJUGAL RIGHTS, the plaintiff's valuation will determine the jurisdiction, according to all High Courts.[30] But, in a SUIT FOR DECLARATION OF THE VALIDITY OF AN ADOPTION, OR TO SET ASIDE AN ADOPTION, THE MADRAS HIGH COURT WILL CONSIDER WHETHER THE RELIEF CLAIMED AFFECTS PROPERTIES which the person adopted will be entitled to, and, therefore determine jurisdiction according to the

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(23) *Sheodeni* v. *Tulsiram*, 15 All. 378 (379); (Adoption case); *Zair Husain* v. *Khurshedjan*, 28 All. 545 (551)=1906 A.W.N. 99 (F.B.) (Restitution of conjugal rights).

(24) *Bai Rewa* v. *Keshavram*. (1895) B.P.J. 228; *Bai Machbai* v. *Bai Hirbai*, (1911) 35 Bom. 264=10 I.C. 816 (Adoption case); also see *Vachami Kashabai* v. *Vachami Namba*, 33 Bom. 307.

(25) *Prohladchandra* v. *Dwarkanath*, (1910) 37 Cal. 860=6 I.C. 636; *Jein Mahomed* v. *Masher Bibi*, (1907) 34 Cal. 352 (356); *cf.* 13 Cal. 232; and 31 Cal. 849 (Restitution of conjugal rights); also see In re *Mulla Ajim*, 14 Cal. 351 (352); and cf. *Mowla Newar* v. *Sajidulnissa*, 18 Cal. 378 (381)—(Appeal to Privy Council); and *Jan Muhd.* v. *Mashar*, 34 Cal. 352.

(26) *Vasireddi Veeramma* v. *Marupadi Butchiah*, 50 Mad. 646=101 I.C. 379 (381, 382)=1927 Mad. 563 (565); citing *Keshava Sanabhaga* v. *Lakshminarayana*, 6 Mad. 192 (Suit to set aside an adoption); and cf. *Chingacham Sankaran* v. *Gopalan*, 30 Mad. 18.

(27) 50 Mad. 646, *supra*; citing 31 Cal. 849; and 28 All. 545; also see *Mirza Hyder Ali* v. *Hussain Raza*, (24 I.C. 316=1 L.W. 398); (A suit for declaration that plaintiff is the member of a charity committee).

(28) *See* 50 Mad. 646=101 I.C. 379 (381, 382)=1927 Mad. 563 (565); citing *Mohini* v. *Gurchandra*, 56 I.C. 762=1921 Pat. 105; *Venkatachellam* v. *Srinivasa*, 75 I.C. 115=1924 Mad. 84; and *Karrak* v. *Kaliyatta*, 79 I.C. 343=1924 Mad. 621.

(29) 50 Mad. 646=101 I.C. 379 (381, 382)=1927 Mad. 563 (565); citing *Keshava* v. *Lakshminarayana*, (6 Mad. 192); and *Ibrayan* v. *Komamuti*, 15 Mad. 501=2 M.L.J. 255.

(30) *Zair Husain* v. *Kurshedjan*, 28 All. 545 (551); *Golam Rahman* v. *Fatima Bibi*, 13 Cal. 232 (236); *Jan Mahomed* v. *Mushar Bibi*, 34 Cal. 352 (356); *Jasadha* v. *Chotu*, (4 I.C. 836=34 Bom. 236).

market-value of the properties, differing in this respect from the High Courts of Allahabad, Bombay and Calcutta, which hold that the plaintiff's valuation determines jurisdiction.[31] According to Madras High Court, in SUITS FOR THE REMOVAL OF A TRUSTEE, OR KARNAVAN OF A MALABAR TARWAD, the value of trust property will determine the value for purposes of jurisdiction,[32] and, in SUITS TO SET ASIDE A DOCUMENT, OR TO COMPEL THE REGISTRATION OF DOCUMENT, the relief claimed not being capable of valuation, the value of the interest affected by the document would be taken to be the jurisdictional value of the suit.[33]

55. PRINCIPLES FOR THE DETERMINATION OF VALUATION OF SUITS—(1) Allegations in the plaint considered.—For the purpose of determining the valuation of a suit, the allegations in the plaint are to be assumed true.[34] A decision as to the amount of Court-fee should be based solely on a consideration of the cause of action on which the plaintiff is suing,[35] and, in determining whether a plaint bears sufficient Court-fee regard must be had to the allegations of the plaintiff in the plaint,[36] to the nature of the relief sought in substance,[37] without any consideration of the evidence in the case.[38] "For the right determination of the question (of Court-fee) it is necessary to ascertain what are the objects and the nature of the suit."[37] Where a plea is taken to the effect that the plaint is insufficiently stamped, all that a Court has to do is to see whether the Court-fee as paid is sufficient according to the various allega-

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(31) 50 Mad. 646=101 I.C. 379=1927 Mad. 563, *supra*; also 75 I.C. 115=1924 Mad. 84 (85); 6 Mad. 192 (196); and *cf.* f.-ns. (23), (24) and (25) above.

(32) *Raghavachariar* v. *Raghavachariar*, 8 I.C. 545=20 M.L.J. 726; *Sonachala* v. *Manikka*, 8 Mad. 516 (518); *Krishna* v. *Rama*, 11 Mad. 266 (267, 268), cf. *Kunha* v. *Sankara*, [14 Mad. 78 (79)]. But *see* Notification, dated 26th February, 1903, of the *Fort St. George Gazette*, dated 3rd March, 1903, Part II, p. 368, Rule I, which fixes value in such cases at one-third of the valuation of the property possessed by the Tarwal.

(33) *Ramu Aiyar* v. *Sankara Aiyar*, (1908) 31 Mad. 89 (93); *Ramakrishna* v. *Bhagamma*, (1890) 13 Mad. 56 (59) (Suit to enforce registration); *Venkatachalam* v. *Srinivasa*, 75 I.C. 115=1924 Mad. 84 (85); and *Parathayi* v. *Samkumani*, 15 Mad. 294 (295); *also see* 23 Mad. 490 and 27 Mad. 480.

(34) *Mohee Lal v. Khet Ram*, 25 W.R. 76, folld. in *Hamidunnissa* v. *Gopalchandra*, 24 Cal. 661 (666); *Manghanmal* v. *Tola Ram*, 16 I.C. 773; *Bagalasundari* v. *Prosanna Nath*, 35 I.C. 797 (798); *Nobsingh* v. *Bholusingh*, 123 I.C. 417 (418)=1930 Nag. 73.

(35) *Manghanmal* v. *Tola Ram*, 16 I.C. 773; also see *Mohendro Chandra* v. *Ashutosh*, 20 Cal. 762; *Pochalal* v. *Umatram*, 115 I.C. 391 (396)=52 Bom. 904; 1928 Bom. 476.

(36) *Manghammal* v. *Tola Ram*, 16 I.C. 773; also *Waliullah* v. *Durga Prasad*, 28 All. 340; *Lalta Prasad* v. *Barmhadin*, 30 I.C. 73; and *Karuppanna* v. *Angammal*, 96 I.C. 129=1926 Mad. 678; *also see* 1933 Mad. 430 (*a*); and 1933 Mad. 431 (*b*).

(37) *Phulkamari* v. *Shanshram*, 35 Cal. 202 (205); *Manghammal* v. *Tola Ram*, 16 I.C. 773; citing *Chingachan* v. *Chingachan*, 30 Mad. 18; also see *Bagala Sundari* v. *Prosanna Nath*, 35 I.C. 797 (798); and *Venkata Ramani* v. *Narayanaswami*, 87 I.C. 660=1925 Mad. 713.

(38) *Manghammal* v. *Tola Ram*, 16 I.C. 773.

tions contained in the plaint, and in doing so it does not decide that those allegations are true.[39] There is "no authority which entitles the Court to compel the plaintiff to pay Court-fees, not on the footing of the plaint, but on the footing of what is afterward decided by the Court."[40] It was, similarly held in a Punjab case[41] "that ordinarily, and in the absence of *mala fides* on the part of the plaintiff, the value for purposes of jurisdiction must be determined with reference to the claim made and not to the decision upon that claim."[41]

(2) Averments in written statement of the Defendant not considered.—The general proposition is that "the value of a suit both for purposes of Court-fee and jurisdiction, must be taken on the case brought by the plaintiff irrespective of the pleas raised by defendant."[42] The Court-fees is to be determined on the nature of the allegations in the plaint, and not on what is set up or pleaded in the defence."[43] For the purpose of ascertaining the Court-fees payable in respect of a plaint regard must be had to the allegations in the plaint. Whether they have or have not been denied in the written statement is not a matter which signifies.[44] For example, in a suit for partition and separate possession by a person claiming to be in joint possession of the property, the mere denial by the defendant that plaintiff was in joint possession does not alter the character of the suit.[45] Similarly, in a suit for redemption of certain mortgages, where plaintiff's case on the plaint was that he did not admit any mortgage held by the defendant was binding on him except what he offered to redeem. the fact that several documents were set up by the defendant, did not bind the plaintiff to accept the amount of any of such documents as any part of the value of the subject-matter of the suit.[46]

(3) The relief sought in substance by plaintiff determines Court-fees payable.—It has been stated, as a test applicable to all suits, that "the safest course is to ASCERTAIN WHAT THE PLAINTIFF ACTUALLY ASKS FOR BY HIS PLAINT, and not to speculate upon what may be the alterior effect of his success."[47] Accord-

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(39) *Lalta Prasad* v. *Barmbadin*, 30 I.C. 73 (Oudh); citing *Tarachand* v. *Afzal Beg*, (13 I.C. 185=34 All. 184).

(40) *Basuki Behary* v. *Chatter Pandey*, 79 I.C. 913=1924 Pat. 640.

(41) 101 P.R. 1900; *Imam Din* v. *Ghulam Muhammad;* also see *Lakshmanan* v. *Babaji*, 8 Bom. 31; *Madho Das* v. *Ramji*, 16 All. 286.

(42) *Budhsingh* v. *Dewa Singh*, 199 P.L.R. 1908; also see *Mt. Barkatunnissa* v. *Fatima*, 5 Pat. 631; *Bagala Sundari* v. *Prosanna Nath*, 35 I.C. 797 (798); and *Karupanna Thevar* v. *Angammal*, 96 I.C. 129=1926 Mad. 678.

(43) *Sivasubramania* v. *Subramaniah*, 1932 Mad. 409.

(44) *Karupanna Thevar* v. *Angammal*, 96 I.C. 129=1926 Mad. 678.

(45) *Manghammal* v. *Tola Ram*, 16 I.C. 773; *also see* 1932 Cal. 353 (In the matter of *Nandlal Mukerji*).

(46) *Chandu* v. *Kombi*, 9 Mad. 208 (212, 213).

(47) *Ziunatunnessa* v. *Girindra Nath*, 30 Cal. 788; refd. in *Venkata Ramani* v. *Narayanaswami*, 87 I.C. 660=1925 Mad. 713; also see f.-n. (37), *ante*.

ingly, if the plaintiff is bound to ask both for a declaration, and the setting aside of a document but prays merely for a declaration, the suit must be treated for purposes of Court-fees as one for declaration.[48] Where the actual relief asked for is declaration, it would be entirely beside the consideration of the Court whether the suit was likely to fail or not, because the plaint did not ask for a consequential relief.[49] However, it has been held that the application of any particular clause of S. 7 must depend on the SUBSTANCE OF THE CLAIM AND NOT ON THE MERE WORDS USED IN THE PLAINT,[50] and though the suit in question was held to be a merely declaratory suit not involving consequential relief, the Court at the same time expressed the opinion that where it was incumbent on the plaintiff to get the document set aside before he could question it, it must be treated as involving a prayer for consequential relief, and the provisions of Cl. (4) (*c*) would be applicable.[1] The mere form and language of a plaint is not, therefore, the final test, and to arrive at a sound conclusion, the Court has "to look beneath the mere form and verbiage of the plaint and to arrive at what is its real substance."[2] For example, in a partition suit, where the plaint was formed in a mode intended to suggest that both the plaintiff and defendant were in possession of part of the joint property and that merely a change of the mode of enjoyment was desired, but the plaintiff's allegation to the effect that he was a coparcener in the property held by the defendant had been found against him in a previous suit, it was held that even if the plaintiff "chose" to ignore a patent fact like the above, "the Court must have regard to what is in effect the real substance contained in the plaint as compared with the mere impression one might derive on a superficial view from the language used therein."[3]

(4) Alternative reliefs.—Where alternative reliefs are claimed, Court-fees need be paid only in respect of one relief which appears to be of higher value.[4] Melville, J. observed in

(48) *Venkata Ramani* v. *Narayanaswami*, 87 I.C. 660=1925 Mad. 713.

(49) *Brij Gopal* v. *Suraj Karan*, 1932 All. 560; following 1931 All. 369=131 I.C. 604.

(50) *Alaga Iyengar* v. *Srinivasa*, 91 I.C. 709 (711)=1925 Mad. 1248; also see *Chingachan* v. *Chingachan*, 30 Mad. 18; and *Arunachellam* v. *Rangasamy*, 28 I.C. 79=38 Mad. 922 (F.B.); *Harihar* v. *Shyamlal*, 21 I.C. 404=40 Cal. 615; cited in *Noksingh* v. *Bholusingh*, 123 I.C. 417 =12 M.L.J. 185=1930 Nag. 73; also see *Kamla Prasad* v. *Jagarnath*, 1931 Pat. 78 and 1933 Mad. 439 (a).

(1) *Chingacham* v. *Chingacham*, 30 Mad. 18; follo. in *Malikka Meladathil* v. *Kunji Achammal*, 5 I.C. 927=20 M.L.J. 791; (Tnough only a declaration was asked for, the suit was held fell under S. 7 (4), (*c*), as one for cancellation); also see *Arunachalam* v. *Rangasamy*, 28 I.C. 79 =38 Mad. 922 (F.B.).

(2) *Bhagwanappa* v. *Shivalla*, 101 I.C. 770=1927 Nag. 248.

(3) *Bhagwan Appa* v. *Shivalla*, 101 I.C. 770=1927 Nag. 248, following *Bhaddoo* v. *Saddoo*, 81 I.C. 766=1924 Nag. 86; cf. *Minaji* v. *Sitaram*, 81 I.C. 643=1924 Nag. 105.

(4) *Kashinatha* v. *Govinda*, 15 Bom. 82; cited in In re *Paturu Venugopalayya*, 1932 Mad. 158; also see *Motigavari* v. *Pranjivan*, 6 Bom. 302;

Motigavari v. *Pranjivan*,[4a] that "as regards the alternative relief sought, the larger of the two reliefs sought must determine the amount of the stamp." This would, ordinarily, exceed the Court-fee payable in respect of the smaller of the two reliefs. But, where plaintiff had asked for a first relief in respect of which the Court-fees payable is less, and a second relief in the alternative, on which *ad valorem* Court-fee higher, he cannot get exemption from paying the Court-fee in respect of the relief with a higher Court-fee. A plaintiff has to value each of the reliefs claimed in the alternative, to decide the Court-fees due in respect of each, but as he does not get all the reliefs claimed, he has to pay only the highest amount of Court-fee chargeable in respect of any of the alternative reliefs.[5] It was held by the Patna High Court,[6] that where two reliefs are identical in actual money value, but different in respect of Court-fees leviable on each, then the amount of Court-fees payable is to be determined on the relief carrying the higher Court-fee. The principle applicable in such cases is that the greater should be taken to include the less, and when the higher Court-fees payable in respect of any of the reliefs prayed for in the plaint has been paid, the lower Court-fee ordinarily payable in respect of the other relief need not also be paid, if the reliefs are prayed for only in the alternative.[7]

Illustration.

If the Court-fee payable in respect of one prayer is *X* Rs., while that payable in respect of another prayer is 2 *X* Rs.; the plaintiff will have to pay a Court-fee only 2 *X* Rs. He is not bound to pay *X*+2 *Xs*=or 3 *X* Rs.; and it would not be sufficient, if he pays a Court-fee of only *X* Rs., so long as another alternative prayer in respect of which 2 *X* Rs. is payable is contained in the plaint.[8]

56. OBJECTION AS TO VALUATION AND COURT-FEE.—(1) The plea as to deficiency of Court-fee has to be raised by the defendant before the decision of the suit in the Court of first instance, and such plea cannot be raised for the first time in appeal.[9] The proper stage to take such an objection is in the written statement, and if it is made good, it may result in the rejection of the plaint, or its amendment, or the presentation of a fresh plaint, properly framed and valued, in respect of the same cause of action; but a plea advanced for the first time at the hearing of the appeal would be rejected as a pure technicality.[10]

Dasarte Meshy v. *Jay Chand*, 18 I.C. 530=1925 Pat. 193; *Kundanlal* v. *Nand Sarup*, 73 I.C. 709=1923 Lah. 456; *Raja* v. *Mutalli*, 96 I.C. 826=1926 Lah. 467.

(4a) 6 Bom. 302.

(5) In re *Paturu Venugopalayya*, 1932 Mad. 158 (159, 160)=34 L.W. 837.

(6) *Dasarthe* v. *Jaychand*, 78 I.C. 530=1925 Pat. 193.

(7) In re *Paturu Venugopalayya*, 1932 Mad. 158 (159, 160).

(8) *Ibid.*

(9) *Wilayatali* v. *Umardaraz*, 19 All. 165=(1897) 17 A.W.N. 33; *also see* 6 C.L.J. 351=12 C.W.N. 37=3 M.L.T. 33.

(10) *Rachappa* v. *Shidappa*, 50 I.C. 280 (284)=43 Bom. 507=1918 P.C. 188 (P.C.).

In appeals before the High Courts, the mode in which any question as to the amount of any fee payable should be determined is prescribed in Chap. II of the Act, and the objection has to be referred to the Taxing Officer or Taxing Judge, but cannot be entertained at the hearing of the appeal.[11] However, where there has been no decision by the Taxing Officer under S. 5, it is open to the respondent to raise the objection on appeal at the hearing.[12] (2) Where the amount of Court-fee payable in a suit is disputed, the court has to frame an issue, and record evidence if necessary, to determine if the plaintiff's allegations upon which Court-fee depends are established, and the suit can be proceeded with; it cannot reject the plaint for non-payment of the deficient Court-fee, on a mere assumption of an attempt made on plaintiff's part, to evade the payment of Court-fee.[13] The Court has the right to determine an issue, as to Court-fee, and its decision, right or wrong, will not ordinarily attract the revisional jurisdiction of High Court, but the decision may be interfered with where on account of its wrong decision the Court refuses to exercise a jurisdiction vested in it by law or exercises a jurisdiction not vested in it by law.[14] Where the trial Judge on an objection by the defendant framed an issue on the point of Court-fees, and determined it in favour of the plaintiff, and the defendant stamped his own appeal accordingly, and did not impeach the correctness of the finding before the Court, he could not in second appeal by the plaintiff, take the preliminary objection that the Court-fee on the memorandum of appeal was insufficient.[15]

(*i*) In suits for money[58] (including suits for damages or compensation,[59] or arrears of maintenance,[60] of annuities,[60] or of other sums payable periodically)— according to the amount claimed:

for money;

Synopsis.

57. Scope of clause, and its applicability.
58. Suits for money—Illustrations.
59. Suits for damages, or compensation.
60. Suits for arrears of maintenance, or annuities.
61. Appeals, in money suits and appeals in money suits on basis of mortgage.

57. SCOPE OF S. 7, Cl. (i) AND APPLICABILITY.— (1) Cl. (1) of S. 7, of the Court-Fees Act deals with *suits for money*, or for ascertained sums due as damages or compensation, or arrears of maintenance, and of annuities, or of other sums payable periodically. These are a distinct class of cases, to be

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(11) *Ranga Pai* v. *Baba*, 20 Mad. 398 (400).

(12) *Kasturi* v. *Deputy Collector*, 21 Mad. 269 (270).

(13) *Ganga Prasad* v. *Bhavani Bhikh*, 62 I.C. 853=1921 Oudh 174.

(14) *Mani Lal* v. *Durga Prasad*, 80 I.C. 667 (672)=3 Pat. 930=1924 Pat. 673.

(15) *Chunna Lal* v. *Bank of Upper India*, 40 I.C. 904=106 P.W.R. 1917.

distinguished from suits falling under other clauses of this section. Where the CLAIM IS FOR AN ASCERTAINED SUM OF CESSES, the SUIT will be governed by Cl. (1), and not by Cl. (iv) (*f*), of the Court-Fees Act.[16] The CLAIM FOR MONEY MAY BE IN ADDITION TO, OR INSTEAD OF ANY OTHER RELIEF IN THE SUIT; for example, a suit for an order that the defendant should specifically perform a contract of guarantee by causing the restoration of a village to plaintiffs, and in addition to or alternatively for compensation for breach of contract, would fall under this clause.[17] Similarly, a suit for specific moveable property, or for compensation, *i.e.*, the equivalent in value of the articles as damages; arising from the same cause of action, must be stamped under Cl. (1) of S. 7 of the Court-Fees Act, on the total value of the claim, and not under S. 17 of the Act, with the aggregate value of the Court-fees with which separate suits for the various items of property would be chargeable.[18] Likewise, a suit in which plaintiff seeks an account of a certain estate from the executors of a deceased, and in which he claims a certain sum of money as damages in the alternative, is not a declaratary suit, but a suit in which "money-value" has been given to the claim, and it must be stamped as a suit for money falling under Cl. (1).[19] THE FACT THAT PLAINTIFF'S TITLE ARISES INCIDENTALLY to certain property of which rent is claimed, CANNOT AFFECT THE QUESTION OF COURT-FEE.[20] A suit for money alleged to be due in respect of profits of land is not turned into a suit for the determination or enforcement of a right to or interest in immoveable property merely because the defendant raises the question of the title to the land.[21] The main test is what is *sued for*, because the word used is "*suit*", and the test has reference to what is asked for in the plaint, and not to any question or dispute that may arise upon any pleading of the defendant.[22] Accordingly, where plaintiff claims a certain sum of money, on the basis of his own accounts, he is not asking the Court to take any accounts, and the mere fact that, because the defendant disputes the correctness of the plaintiff's accounts, it may be necessary to go into accounts, and that the Court passed a preliminary decree under O. 20, R. 16, is entirely irrelevant for purposes of Court-fees.[23] It has been held by the High Courts of Allahabad, Bombay, Calcutta and Madras, as well as other Courts, that a SUIT FOR THE RECOVERY OF A SPECIFIC SUM OF MONEY DOES NOT ASSUME THE CHARACTER OF A SUIT FOR ACCOUNTS

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(16) *Phulartand Coal Co.* v. *Burrakar Coal Co.*, 128 I.C. 795=1930 Pat. 605 (607)=11 Pat. L.T. 629.

(17) Bombay Printed Judgments, 1890, p. 204; also see *Parumal Ailmal* v. *Motumal*, 17 I.C. 44 [in which there were two distinct causes of action joined in one suit, (1) for money, and (2) for injunction].

(18) *Amar Nath* v. *Thakar Das*, 3 All. 131.

(19) *Ram Doolal* v. *Gopal Kristo*, 16 W.R. 156.

(20) Bombay Printed Judgments, (1893), p. 458.

(21) *Vinayak* v. *Krishna Row*, 25 Bom. 85=2 Bom. L.R. 683.

(22) *Pochalal* v. *Umedram*, 115 I.C. 391 (392)—per Fawcett, C.J.

(23) *Pochalal* v. *Umedram*, supra, 115 I.C. 391 (392); *also see* and *cf.* In the matter of *Bhola Nath*, 32 All. 517=6 I.C. 832.

merely because in the determination of the question in controversy, accounts may have to be examined.[24] Thus, a suit for balance due on Commission Agency, is a suit for money, being the balance alleged by plaintiffs to be due to them on the Commission Agency.[25]

(2) Section 7 of the Act applies to the computation of the fee for purposes of an appeal as well as for the purposes of the plaint. But, Cl. (i) of the section has no application where no amount is claimed for purposes of appeal, *e.g.*, where the question raised in the appeal merely relates to the liability of certain property being proceeded against for the mortgage debt.[26] Similarly, where certain tenants filed a suit against their landlord for commutation of grain rents into money rents, and the Deputy Collector fixed the rate at which commutation was to be made, and the landlord appealed on the ground that the rate fixed was too low, the suit was in effect a suit for a declaration and the appeal was to the same effect, namely, that the commutation shall be at a certain rate higher than that fixed by the first Court, and the case did not fall under Cl. (1) of S. 7 of the Court-Fees Act, as there was no claim for money, and certainly the landlord was not entitled to a decree for any amount whatever in the suit.[27] Likewise, a suit by the plaintiff, one of the owners of certain hills, for a declaration that he is liable to pay *Achut palisha*, a kind of royalty, only at a particular rate, and not at the higher rate claimed by the defendant, is not a suit for a sum of money periodically payable, and falling under S. 7, Cl. (1) of the Act, but one for a declaratory decree, without any consequential relief.[28]

58. **SUITS FOR MONEY—ILLUSTRATIONS.**—(1) The word "*suit*", indicates that THE MAIN TEST IS WHAT IS SUED FOR, OR CLAIMED IN THE PLAINT, and not any question or dispute that may arise upon any pleading of the defendant.[29]

(2) The Court-fees, in a suit for money has to be paid *ad valorem*, under Art. 1, Sch. 1, on "the amount or value of the subject-matter in dispute." Where plaintiff claims to recover a certain amount of money due to him, after deducting a certain amount due by him to the defendant, on the price of certain goods,

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(24) *Pochalal* v. *Umedram*, supra, 115 I.C. 391 (393), relying on *Kshetranath Bhuiya* v. *Kali Dasi Dasi*, 41 I.C. 929=21 C.W.N. 784=27 C.L.J. 96, where a large number of decisions to that effect are cited, *also see* f.-n. (25), below cf. *Sheo Bodh* v. *Surjan*, 19 I.C. 427=11 A.L.J. 238, which goes somewhat further. Even a suit for the recovery of money the precise amount of which could not be ascertained unless the accounts of the parties were examined, was held to be a suit cognisable by a Small Cause Court, and not excluded by Art. 31 of the Provincial Small Cause Courts Act, 1887).

(25) *Harjimal and Sons* v. *Dhanpat Mal Dewanchand*, 64 I.C. 626=1921 Sind 100; citing *Ganwaree Lal* v. *Sheo Shankar*, 1 I.C. 670=13 C.W.N. 815; *Kanji Mal* v. *Panna Lal*, 7 P.R. 1915=28 I.C. 262; *Konduru* v. *Subbiah*, 28 Mad. 394.

(26) *Ramakrishna* v. *Kotta Kota*, 30 Mad. 96 (98); also see *Madho Ray* v. *Bibi Mahbowan Nissa*, 98 I.C. 807=5 Pat. 721=1927 Pat. 46.

(27) *Sandattikalai* v. *Veerappa Goundan*, 78 I.C. 968=1924 Mad. 623.

(28) *Karakkattidathil* v. *Kalliyatt*, 79 I.C. 343=1924 Mad. 621.

(29) *Pochalal* v. *Umedram*, 115 I.C. 391 (392).

the COURT-FEE HAS TO BE PAID ON THE AMOUNT ACTUALLY CLAIMED IN THE SUIT.[30] Any portion of the credit actually allowed, in the plaint, to the defendant, by way of set-off, need not be stamped.[31] However, where in a suit for redemption of a *kanom*, the plaintiff seeks to deduct from the *kanom* amount certain damages to which he claims to be entitled, there is an additional cause of action in respect of damages, and under S. 17, the plaintiff is bound to pay Court-fee on the *kanom* amount, and also on the amount claimed by him as damages.[32]

(3) Where the defendant pleads a set-off in the written statement, the COURT-FEE PAYABLE ON THE CLAIM FOR SET-OFF should be the same as for a plaint in a suit.[33] A set-off is a cross debt for which a separate action may be had;[34] and, therefore, where the defendant sets up a claim by way of set-off, it has the effect of a plaint in a cross-suit for the purpose of enabling the Court to adjudicate on the cause of action, on which the set-off is claimed,[35] and, where the amount of set-off pleaded exceeds the amount of the claim made against the defendant, he must pay *ad valorem* Court-fee on the entire sum claimed by him, and not merely on the difference between the two amounts, to entitle him to have his claim enquired into and determined in the trial of the suit.[36] A plea of set-off is quite distinct from the plea of payment, and should not be entertained until Court-fee with respect to it has been paid by the defendant in the Court of first instance, nor should it be entertained if the claim is not within the jurisdiction of the Court.[37] The Court is debarred from going into the question of set-off, when the written statement pleading a set-off is not properly stamped.[38]

(4) Where a BOND is PAYABLE BY INSTALMENTS, and the dates for the payment of certain instalments have not yet arrived, and the bond contains no stipulation, that if default is made in the payment of one instalment, the whole of the instalments will because due, the suit instituted for the recovery of an instalment, with or without interest, has to be stamped on the aggregate

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(30) *Qyamuddin* v. *Delhi Flour Mills Co.*, (1918) 47 I.C. 982 (P.C.).

(31) *Abrahim & Co.* v. *Ebrahim Gorabhoy*, 84 I.C. 971 (973)=2 Rang. 462=1925 Rang. 65.

(32) *Govindan Nair* v. *Kanhirathoti Kakil*, 94 I.C. 557=1926 Mad. 542=50 M.L.J. 213.

(33) *Amir Zama* v. *Nathu Mal*, 8 All. 396=(1886) 6 A.W.N. 159; folld. in *Majirbai* v. *Narotam*, 13 Bom. 672; and *Chenappa* v. *Raghunatha*, 15 Mad. 29; [Note, the words "written statement, pleading a set-off or counter-claim", which were inserted by S. 155, and Sch. IV of the Code of the Civil Procedure, Act V of 1908.

(34) *Jessa Ram* v. *Isardass*, 27 I.C. 320 (In a suit for partnership accounts, the defendant's claim for a decree on accounts, is not a counter-claim).

(35) *Nawbut Pattak* v. *Mahesh*, 32 Cal. 654 (657).

(36) *Chakhanlal* v. *Kanhaiyalal*, 69 I.C. 921 (922)=1923 All. 118 =45 All. 218.

(37) *Mahommad Raza* v. *Kubra Bibi*, 15 I.C. 526 (Oudh).

(38) *Muthu Erulappa* v. *Vunuku*, (1916) 36 I.C. 957 (L.B.).

amount of the instalment and interest claimed, and not on the amount of the bond, or the sum of all instalments due or to became due thereafter.[39]

It has been held by the Calcutta High Court,[40] that a suit for possession and MESNE PROFITS is governed by S. 7, sub-Section (1) of the Court-Fees Act, and not by Cl. (3) of Cl. (6) of Art. 17 of Sch. II to the Court-Fees Act. A claim for mesne profits is not a claim the value of which cannot be ascertained.[41] It is to be observed that the Court-fees has to be paid only upon the mesne profits CLAIMED ANTECEDENT TO THE SUIT, and a plaint or a memorandum of appeal is not liable to stamp duty in respect of mesne profits subsequent to the suit,[42] which at the date of plaint must be treated as unascertainable, because dependant upon on uncertain element. Court-fee cannot be levied in respect of a claim for mesne profits *pendente lite*.[43] And under S. 11 of the Court-Fees Act, a fee is payable upon future mesne profits after ascertainment.[44]

(6) A SUIT FOR RENT, and declaration of title with injunction, is a composite suit based on two distinct causes of action, and so far as the claim for an ascertained amount of rent is concerned, it would fall within Cl. (1) of S. 7 of the Court-Fees Act.[45] But a suit for assessment of rent and for recovery of a specific sum of money as damages for use and occupation is in the nature of a suit to obtain a declaratary decree where consequential relief is claimed, and the amount of Court-fees payable on such a suit should be computed according to S. 7 (iv) (*c*) of the Court-Fees Act.[46] Where in a suit for rent, the question of plaintiff's title to land arises incidentally, but no relief is prayed for concerning possession, the Court-fee has to be paid as in an ordinary suit for money.[47] Similarly in a suit for *Wasilat* Court-fee is to be paid on the amount claimed, notwithstanding the defendant's denial of plaintiff's title to land.[48] But

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(39) *Sutto Bhama* v. *Jameeruddy*, 4 W.R. (8 C.C.) 12.

(40) *Banwari Lal* v. *Sheo Shankar*, 1 I.C. 670=13 C.W.N. 815.

(41) *Nand Kumar* v. *Bilas Ram*, 40 I.C. 579=3 P.L.J. 67; 22 folld. in *Ram Bilas* v. *Amir Singh*, (1920) 55 I.C. 24 (25) (Pat.).

(42) *Ramkrishna Bhikaji* v. *Bhimabai*, 15 Bom. 416; *also see* 17 Bom. 41; and *Maiden* v. *Janakiramayya*, 21 Mad. .71; folld. in *Banwari Lal* v. *Sheo Shankar*, 1 I.C. 670=13 C.W.N. 815; relied in *Bhupendra* v. *Purna Chandra*, 24 I.C. 232 (Cal.); also see *Brahmayya* v. *Lakshminarasimhan*, 16 Mad. 310; *Manik Chand* v. *Bibi Najiban*, 49 I.C. 962 (Pat.); and *Deonandan* v. *Ganga Prasad*, 8 Pat. 906=120 I.C. 313=1929 Pat. 731; cf. *Ram Golam* v. *Chintaman*, 93 I.C. 939=1926 Pat. 49=5 Pat. 361 (F.B.); *Saminatha* v. *Muthuswami*, 5 I.C. 880=20 M.L.J. 98 (No Court-fee is payable on future mesne profits decreed from date of plaint) and *also see* 6 O.C. 351.

(43) *Bhupendra Kumar* v. *Purna Chandra*, 24 I.C. 232, citing 15 Bom. 416=21 Mad. 371=1 I.C. 670=13 C.W.N. 815.

(44) Cf. *Dwarkanath* v. *Debendro Nath*, 33 Cal. 1232; *see* 93 I.C. 939 (F.B.).

(45) *Parumal* v. *Motumal*, (1912) 17 I.C. 44=6 S.L.R. 114.

(46) Cf. *Kali Charan Roy* v. *Kesho Prasad*, 51 I.C. 15=4 Pat. L.J. 561.

(47) Bombay Printed Judgments, 1893, p. 458.

(48) 1 Ind. Jur. (O.S.) 103=1 Hay 370=Marsh 165.

where plaintiff asks for house-rent in future, from the date of suit to the date on which possession of the house should be delivered to him, it is not a claim for money in the meaning of Cl. 1; "the rate is known, but not the sum that would be actually due when possession is given under the decree".[49] But this view was not shared by another Judge of the same Bench.[50]

(7) A SUIT FOR FUTURE INTEREST does not require any additional stamp on the amount claimed from date of institution of suit until payment, as it stands on the same footing as future mesne profits, which do not fall under S. 7 of the Court-Fees Act.[1] Court-fee has to be paid on the principal sum plus interest at the bond rate upto the date of the suit; but plaintiff is not bound to value the future interest, which he claims from the date of the suit up to the date of realization, or to pay any Court-fee therefor.[2] But, where plaintiff obtained a decree for the amount claimed, and also for an additional amount as interest from the date of the suit up to the date of decree, which he could enforce by execution, the value of appeal would be increased correspondingly.[3]

(8) SUITS FOR MONEY ON BASIS OF MORTGAGE.—(1) In a suit by a mortgagee for the amount of principal and interest by sale of mortgaged property, the Court-fee should be paid on the whole CLAIM INCLUSIVE OF PRINCIPAL AND INTEREST.[4] Similarly, in a suit by a mortgagee to recover the principal and interest on a mortgage-bond, against the heir of the deceased mortgagor by sale of the mortgaged property, and all other property in the hands of the heir liable for debts of the original mortgagor, the claim should be valued, not at the principal debt, but the entire amount of principal and interest due under the mortgage-bond.[5] No additional stamp is required, when plaintiff is claiming INTEREST FROM THE DATE OF THE INSTITUTION OF SUIT UNTIL PAYMENT. IT STANDS ON THE SAME FOOTING AS FUTURE MESNE PROFITS, which do not fall under S. 7 of the Court-Fees Act.[6] But where plaintiffs instituted a suit to enforce a mortgage, and paid Court-fees on the principal sum plus interest at the bond-rate up to the date of the suit, and they also claimed INTEREST PENDENTE LITE, AND

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(49) *Chedi Lal* v. *Kirath Chand*, 2 All. 682; per Spanhie, J.; *held*, that probably S. 11 would apply.

(50) *Cf.* Oldfield, J., in 2 All. 682, *supra*, held, that the claim as to future rent should be charged for Court-fees under S. 7 (*i*), leviable under the provisions of S. 11 of the Act.

(1) *Vithal Hare Athavle* v. *Govind Vasudeo*, 17 Bom. 41; citing B.P.J. 1890, p. 364.

(2) *Srinivasa Row* v. *Ramaswami*, 10 M.L.J. 144; also see *Ramasami* v. *Subbasami*, 13 Mad. 508; cited in *Jamuna Rai* v. *Ramtahall*, 77 I.C. 1039=1922 Pat. 387=1 Pat. 19.

(3) *Jamuna Rai* v. *Ramtahall*, 1 Pat. 19=1922 Pat. 387=77 I.C. 1039 (1040).

(4) 7 Bom. L.R. 194.

(5) *Kashinath* v. *Ganpatrao*, 18 Bom. 696.

(6) *Hari Athavale* v. *Govind Vasudeo*, 17 Bom. 41; also see *Ramakrishna* v. *Bhimabai*, 15 Bom. 416.

FUTURE INTEREST UP TO THE DATE OF REALIZATION at the rate entered in the bond, and an additional sum by way of interest at the bond-note from the date of suit up to the date of decree was granted by the appellate decree, it was held, in second appeal, that the plaintiffs were bound to pay additional Court-fees on the amount of interest *pendente lite* awarded by the lower-appellate Court.[7] However, where in a suit to enforce payment of a mortgage by the sale of mortgaged property, the defendant set up two earlier mortgages, in respect of which the plaintiff had asked for no relief, and the trial Court provided in its decree that the plaintiffs on payment of prior mortgages, should be competent to get the property sold by auction, and the plaintiffs when called upon to pay ADDITIONAL COURT-FEE ON THE SUPPLEMENTAL RELIEF as regards prior mortgages, objected to pay Court-fee on the relief granted by the decree WHICH WAS NOT SOUGHT FOR BY PLAINTIFFS, the High Court upheld the objection, and at the same time modified the decree by striking out the portion which dealt with the prior mortgages.[8] In SUITS TO ESTABLISH THE VALIDITY OF A CHARGE UPON PROPERTY the value of the subject-matter "must depend on two considerations—the amount of the charge, and the value of the property it is sought to make available for the satisfaction of the charge."[9] It has been laid down by the Madras High Court that "if the value of the property is in excess of the charge the value is the amount of the charge," "but where the value of the property is less than the amount of the charge", ... the value of the subject-matter is the value of the property."[10] This has been based on the reasoning that the subject of the suit is the right to make the property available for the satisfaction of the whole charge, and where the charge is less, the value is the amount of the charge, but where the value of the property is less, the value of the subject-matter cannot exceed the value of the property available for the satisfaction of the charge.

59. **SUITS FOR DAMAGES, OR COMPENSATION.**—A SUIT FOR COMPENSATION IN THE NATURE OF RENT FOR THE USE AND OCCUPATION OF HOUSE PROPERTY up to the date of the institution of the suit, and similar compensation for the "future" from the institution of the suit to the date on which possession delivered to plaintiff, was held to be not a claim for money in the meaning of Cl. (i). Spankie, J. held that plaintiff's claim for house-rent in future was in the nature of mesne profits from the date of decree to the date of possession under the decree, which is provided for by S. 11 of the Court-Fees Act.

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(7) *Jamuna Rai* v. *Ramtabal*, 77 I.C. 1039 (1040)=1 Pat. 19=1922 Pat. 387 (2).

(8) *Indar Singh* v. *Rithai Singh*, 30 All. 103=5 A.L.J. 18=1908 A.W.N. 31=3 M.L.T. 165.

(9) *Krishnamachariar* v. *Srinivasa Ayyangar*, 4 Mad. 339.

(10) 4 Mad. 339, *supra*; follD. in *Venkappa* v. *Narasimha*, 10 Mad. 187; and *Kesavarapu* v. *Kotta Kota Reddi*, 30 Mad. 96=16 M.L.J. 458=1 M.L.T. 317.

Oldfield, J. however, was of opinion that so much of the claim as referred to future rent should be charged for Court-fees under Cl. (1) of S. 7, leviable under the provisions of S. 11 of the Act.[11] A SUIT FOR THE RECOVERY OF MONEY AND VARIOUS ARTICLES left in the custody of one of the defendants, for whom the other defendants became sureties, AND ALTERNATIVELY, FOR THE EQUIVALENT IN VALUE OF THE ARTICLES AS DAMAGES, is a claim falling under Cl. (1) of S. 7 of the Court-Fees Act.[12] Similarly a suit for an order that the defendant should specifically perform a contract of guarantee, by causing the restoration of a village to plaintiffs, and should do all acts necessary to give them full possession and in addition to or intead of such injunction, for COMPENSATION FOR BREACH OF CONTRACT, is not one for possession of land but FOR SPECIFIC PERFORMANCE and falls under this clause.[13] No Court-fee is required on compensation for improvements, which a Court is bound to determine in a suit by a tenant, under the provisions of Punjab Tenancy Act, to contest the notice of ejectment by the landlord.[14] In a SUIT FOR RECOVERY OF MONEY DUE AFTER DEDUCTING A SUM ASSESSED AS THE AMOUNT OF DAMAGES suffered by the plaintiff by reason of the defendant's failure to perform certain contracts entered into between the parties, the credit allowed by plaintiff to the defendant should be taken into consideration for the purpose of determining the Court-fee to be levied upon the plaint. The Court has no doubt to adjudicate upon the amount of the loss sustained by the plaintiff on account of the breach of contracts, but S. 7, Cl. (1) of the Court-Fees Act prescribes that the fee payable in a suit for money must be according to the amount claimed.[15] It has been pointed out by the Rangoon High Court,[16] that there is an important difference between the method of valuation for purposes of jurisdiction permissible in the case of a claim for a money-decree made in a plaint, and the method of valuation for purposes of jurisdiction permissible in the case of a set-off pleaded by a defendant in his written statement. "The valuation of a plaint in which a money-decree is claimed is based on the actual sum claimed after allowing for deductions such as sums expressly set-off in the plaint." The right of a defendant to plead a set-off is provided for in R. 6 of O. 8 of the Civil Procedure Code, and "the valuation of a set-off, for the purposes of jurisdiction must be taken as relating to the whole of the ascertained sum so pleaded and without reference to any portion of the plaintiff's claim which the defendant admits." Where in

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(11) *Chedi Lal* v. *Kiratte Chand*, 2 All. 682 (F.B.).

(12) *Amar Nath* v. *Thakurdas*, 3 All. 131.

(13) Bombay Printed Judgment, 1890, p. 204.

(14) *Wasaya* v. *Isa*, 30 I.C. 848=4 P.W.R. Rev. 1915.

(15) *Dayaramuddin* v. *The Delhi Flour Mills Company*, (1918) 47 I.C. 992.

(16) *Abrahim & Co.* v. *Ebrahim Gorabhoy*, 84 I.C. 971 (972)=2 Rang. 462=1925 Rang. 65; cf. *Govindan Nair* v. *Kanhirathotikazil*, 94 I.C. 557=1926 Mad. 542.

a suit for redemption of a *kanom*, the plaintiff seeks to deduct from the *kanom* amount certain *damages to which he claims to be entitled*, he is bound to pay Court-fee only on the *kanom* amount after deducting the amount claimed as damages.[17]

60. **SUITS FOR ARREARS OF MAINTENANCE, OR ANNUITIES**.—In a claim for a sum of money on account of monthly allowance charged on certain property, FOR ARREARS DUE, Court-fee has to be paid under Cl. (i) of the Court-Fees Act, though a similar claim for a declaration of right to receive the periodical payment would come within the purview of Cl. (ii) of S. 7, and is not taxable with a fixed fee under Art. 17, Cl. (iii), Sch. II of the Act.[18] A declaration of a right to an annuity was held to be liable to stamp duty regulated by the market value of the annuity, and "*prima facie*" ten times the amount of the annuity was assumed to be its market value.[19] Where a suit is to secure a certain sum as arrears of annuity, and also to call upon the defendants to furnish security for the payment of a sum of money per mensem in future, or to direct the defendants to invest a sum of money which will yield the annuity as interest thereon, the first part of the claim falls under Cl. (i), and the second part of the prayer is chargeable under S. 7, Cl. (ii) Court-Fees Act, on ten times the annuity.[20] The Court of Judicial Commissioner, Nagpur, has also held, in *Govind* v. *Vithabai*,[21] that where plaintiff sues for arrears of maintenance only, and the decree of Court would not operate with respect to the sums for the future, the suits is governed by S. 7, Cl. (i) of the Court-Fees Act and S. 7, Cl. (ii) would apply only when plaintiff is suing for future maintenance. To the same effect is a ruling of the Oudh Chief Court, in *Bhairon Dei* v. *Ram Sewak*,[22] that where the plaintiff's case as laid in the plaint led to other relief than the arrears of maintenance, the Court-fee payable was according to the amount claimed, under Cl. (i) of S. 7, of the Court-Fees Act, and, there being no declaration as to future right at a monthly sum involved in the decree of the trial Court, plaintiff was not liable to pay Court-fee also according to ten times the amount claimed to be payable for one year under Cl. (ii) of S. 7 of the Court-Fees Act.

61. **APPEALS IN MONEY-SUITS**.—(1) The provisions of S. 7 applies equally to appeals as to original suits, and the word "suit" in S. 7 of the Act is not used in contradistinction to the

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(17) *Govindan Nair* v. *Kanhirathotikazil*, *see* 1926 Mad. 764=50 M.L.J. 493=1926 M.W.N. 442 [Reversing on review, 94 I.C. 557=1926 Mad. 542].

(18) *Shabzadi Begum* v. *Mahbubalishah* 55 I.C. 809=42 All. 353=18 A.L.J. 328.

(19) *Narsinvacharya* v. *Svami Rayacharya*, 5 B.H.C.R. (A.C.J.) 55, cited in *Shabzadi Begum* v. *Mahbubalishah*, *supra*, 42 All. 353.

(20) *Guryabai* v. *Har Kuar Bai*, 6 A.W.N. (1886) 228=8 All. 626.

(21) 87 I.C. 911=1925 Nag. 435.

(22) 107 I.C. 552=1927 Oudh 623=1 Luck. Cas. 648.

word "*appeal*".[23] Where a money suit is dismissed in the trial Court, and the plaintiff appeals he cannot be required to pay Court-fees on any amount in excess of the amount claimed in the plaint by reason of the fact that FURTHER INTEREST has accrued DURING THE PENDENCY OF THE SUIT in the trial Court;[24] though it may be observed, that "in an appeal by the *defendant*, it might have been otherwise."[25] If a suit is dismissed, the plaintiff is entitled to value his appeal at the sum claimed in the plaint in respect of the principal and interest up to the date of filing the plaint, and he is not bound to value the future interest, which he claims from the date of the suit up to the date of realization, or to pay any Court-fee thereunder.[26] No additional stamp is required in appeal in respect of appellant's claim for interest after date of plaint, as the claim for interest from institution of suit until payment, stands on the same footing as future mesne profits which do not fall under S. 7 of the Court-Fees Act.[27] Similarly, in an appeal from mortgage suit no Court-fee is payable on interest accrued *pendente lite*.[28] In *Ram Bhujhwan Prasad Singh* v. *Nathoram*,[29] there was an appeal against an order of the trial Court disallowing an objection in an execution matter. In the suit brought by the decree-holder on a mortgage for Rs. 32,000, he obtained a decree for Rs. 236 only, and on appeal the High Court granted him a decree for a lakh of rupees. The decree-holder then attempted to execute his decree, and the judgment-debtor objected to that, as Court-fee on Rs. 32,000 only had been paid, the decree could not be executed until the full Court-fee on the total amount decreed had been paid, under the provisions of S. 11 of the Court-Fees Act. The High Court did not accept this contention, holding that the suit was not one for an account such as is referred to in S. 11 of the Court-Fees Act; so the decree in a suit on a mortgage for an amount exceeding the amount

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(23) *Sangat Bakshsingh* v. *Rawat Dijdeo*, (1922) 67 I.C. 968 (969)=25 O.C. 30; cf. *Nepal Rai* v. *Debi Prasad*, 27 All. 447; and *Reference under the Court-Fees Act*, 29 Mad. 367; also see *Gumani* v. *Banwari*, 54 I.C. 733=22 O.C. 289 (Suit for redemption, or foreclosure).

(24) *Sadhusaran* v. *Barhamdeo*, 103 I.C. 592=1927 Pat. 230.

(25) *Ibid.*, 103 I.C. 592=1927 Pat. 230.

(26) *Srinivasa Row* v. *Ramaswami Chetti*, 10 M.L.J. 144; and *Ramasami* v. *Subbasami*, 13 Mad. 308; *also see* f.-n. (24) *supra*.

(27) *Hari Athavale* v. *Govind Vasudeo*, 17 Bom. 41; citing *Ramakrishna* v. *Bhimabai*, B.P.J., 1890, p. 364; cf. *Tarapada Mitra* v. *Jagadamba Kumari*, 52 I.C. 802 (Pat.); [*Held*, that in equity and law, a party is required to pay a Court-fee upon the sum for the recovery of which he seeks the help of the Court. Thus where a decree-holder sues to recover a sum as interest in addition to the sum named in the decree, he must pay Court-fee on the amount he claims].

(28) *Ram Bhujwan Prasad* v. *Natho Ram*, 70 I.C. 483=1922 Pat. 59=3 Pat. L.T. 146; and *Kali Prasad Singh* v. *Mathura Prasad*, 77 I.C. 1054=1923 Pat. 28=3 Pat.L.T. 813; also see *Bhagwati Prasad* v. *Bishun Pragash*, 70 I.C. 953=1922 Pat. 386=3 Pat.L.T. 310; *Bhawani Prasad* v. *Kutabunnissa*, 27 All. 559=(1905) A.W.N. 84=2 A.L.J. 263; and *Jamuna Rai* v. *Ramtahal*, 77 I.C. 1039=1 Pat. 19=1922 Pat. 387.

(29) 70 I.C. 483=1922 Pat. 59, *supra*, also see 105 I.C. 395=8 Pat. L.T. 331.

claimed was allowed to be executed without payment of any additional Court-fee. Similarly, where in an appeal upon which proper Court-fees have been paid, a judgment is passed under which a larger amount is found due to the appellant than the amount for which he had paid Court-fees, it was held by the Patna High Court, that the office cannot refuse to draw up a decree in terms of the judgment, and there is no provision in the Court-Fees Act under which the appellant can be called upon to pay additional Court-fees in respect of the excess amount found due to him.[30] In *Bhagwati Prasad* v. *Bishun Pragash*,[31] it was held, by the same High Court, that the appellant was not liable to pay any Court-fee on the amount of interest from the date of grace up to the date of hearing of the appeal, as "at the time when the appeal was filed, it was unknown what the amount of interest would be", and reference was made to the case of *Vithal Hari Athavale* v. *Govind Vasudeo*,[32] in support of the opinion. The question was again fully considered by the Patna High Court in *Kali Prasad Singh* v. *Mathura Prasad*,[33] where the contrary view was also noticed,[34] and it was held, "that when a suit is dismissed the plaintiff is entitled to value his appeal at the sum claimed in the plaint in respect of the principal and interest up to the date of filing the plaint and is not bound to value the future interest which he may claim from the date of suit up to the date of realization, or to pay any Court-fee thereon. But if any future interest is determined by the trial Court, and is entered in the decree then the plaintiff, on appeal by the defendant, is bound to pay additional Court-fee on the sum of interest so added in the decree as having accrued from the date of the suit up to the date of the preparation of the decree in the lower Court." This view seems to be in accordance with that expressed in *Jamuna Rai* v. *Ramthall Raut*[35] as well as in agreement with the views of the Bombay, Madras and Allahabad High Courts. The view taken by the Taxing Judge in the earlier unreported case of *Mahant Janki Sarandas* v. *Harbansdeo*[36] is virtually overruled, by the decision of the Division Bench in the case of *Bhagwate Prasad Singh* v. *Bishun Pragash Narain*.[37] See also a ruling of the Punjab Chief Court in *Gobind Lal* v. *Baldeo Singh* holding that the plaintiff appellant was not called upon to pay any further stamp on the prayer for future interest.[38]

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(30) *Debi Lal Sahu* v. *Koleshir Gir*, 105 I.C. 395=8 Pat.L.T. 331=1928 Pat. 58.

(31) 70 I.C. 953=1922 Pat. 386.

(32) 17 Bom. 41; *see* f.-n. (27), *ante*.

(33) 77 I.C. 1054=1923 Pat. 28=3 Pat.L.T. 813.

(34) S.A. No. 489 of 1920 (*Mahat Janki Saran* v. *Harbans Deo*); and *Gobardhandas* v. *Narendra Bahadur Singh*, 50 I.C. 798=22 I.C. 1.

(35) 77 I.C. 1039=1922 Pat. 387=1 Pat. 19.

(36) S.A. 489 of 1920.

(37) 70 I.C. 953=1922 Pat. 386, *see* f.-n. (31), above, *also see* 103 I.C. 592=1927 Pat. 230.

(38) 24 I.C. 931=226 P.L.R. 1914=128 P.W.R. 1914.

(2) When in a suit mesne profits are directed to be ascertained in execution, the memorandum of APPEAL PREFERRED AGAINST the decree, should bear Court-fee upon the amount claimed antecedent to the suit, but not subsequent to it,[39] "because, there is a substantial difference between MESNE PROFITS ANTECEDENT TO THE SUIT which may be always approximately valued as they have already accrued due during a definite period, and mesne profits subsequent to the suit which at the date of the plaint must be treated as unascertainable because dependant upon an uncertain element, namely, the period of time which would intervene between the date of institution of the suit and the date OF RECOVERY OF POSSESSION UNDER THE DECREE."[40] It has been held, by the Patna High Court, that *ad valorem* Court-fee is payable in an appeal against the amount of mesne profits fixed in execution proceedings even though the appellant has already paid *ad valorem* Court-fee in an appeal in the main case which has been decided against him.[41]

(3) In an APPEAL BY THE DECREE-HOLDER FROM A DECREE FOR MONEY FIXING INSTALMENTS, Court-fee must be paid on the difference to plaintiff between getting his money on the date of decree and getting it by instalments as ordered (*i.e.*, the discount on the deferred instalments).[42]

(4) APPEAL IN MONEY SUITS ON THE BASIS OF MORTGAGES.— It has been noticed in paragraph 61 (1), above, that according to the High Courts of Madras,[43] Allahabad.[44] Bombay[45] and Patna,[46] where plaintiffs' suit for principal and interest due under a mortgage bond is dismissed, and along with it his claim for interest *pendente lite*, and up-to-date of realization, the plaintiff is entitled to value his appeal at the sum claimed in the plaint in respect of the principal and interest up to the date of filing the plaint, and he is not bound to value the future interest which he claimed from the date of the suit up to the date of realization, or to pay any Court-fee thereunder. Where a person gets a decree for the amount claimed, but not against the property, and he seeks in appeal to charge the property, the Court-fee is not Rs. 10, for a declaration merely, but must be paid *ad valorem* calculated on the amount of the debt which is to be recovered from

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(39) *Banwari Lal* v. *Sheo Shankar*, 1 I.C. 670=13 C.W.N. 815; citing *Ramkrishna Bhikaji* v. *Bhimabai*, 15 Bom. 416; and *Maiden* v. *Janakirammayya*, 21 Mad. 371.

(40) *Banwari Lal* v. *Sheo Shunker*, 1 I.C. 670 (673)=13 C.W.N. 815.

(41) *Mullick Mukhtar Ahmed* v. *Mt. Rahimunnissa*, 79 I.C. 906 Pat.; citing *Tarapada Mitra* v. *Jagdamba*, 52 I.C. 802.

(42) *Gobind Lal* v. *Baldeo Singh*, 24 I.C. 931=226 P.L.R. 1914=128 P.W.R. 1914.

(43) F.-n. (26), 10 M.L.J. 144; 13 Mad. 308.

(44) F.-n. (28), 27 All. 559.

(45) F.-n. (27) 17 Bom. 41; B.P.J., 1890, p. 364.

(46) F.-n. (24), 103 I.C. 592=1927 Pat. 230; f.-n. (28); 70 I.C. 483=1922 Pat. 59; 70 I.C. 953=1922 Pat. 386; 77 I.C. 1054=1923 Pat. 28; 77 I.C. 1039=1 Pat. 19=1922 Pat. 387; *also see* f.-n. (38)=24 I.C. 931 (Punj.).

the property in question.[47] Similarly, where in a suit for money on basis of a hypothecation bond, the Court of first appeal finds the debt binding on one defendant, but not on another, and plaintiff appeals against the dismissal of his claim against the latter defendant, the Court-fee payable should be calculated on the amount of debt sought to be recovered.[48] In *Ramasami* v. *Subasami*[48] there is nothing to show that the mortgage debt was in excess of the value of exonerated property, but the question had to be considered in *Kesavarapu* v. *Kotta Kota Reddy*,[49] where it was observed that the amount of the decree was not in dispute, and the question being the liability of the land claimed by certain defendants to be proceeded against for the debt, the value of the subject-matter in dispute on appeal had to be taken on the principle of the decision in *Krishnamachariar* v. *Srinivasa Ayyangar*.[50] This principle, has been accepted by the Calcutta High Court, in *Bunwari Lal* v. *Daya Sunker*,[1] and in the case of *Jugal Pershad Singh* v. *Parbhu Narain*.[2] Where some of the defendants in a mortgage suit appealed from the decree made in the suit, without questioning the amount decreed, but urging that the mortgage was not binding against them so far as their shares in the mortgaged properties were concerned, the Calcutta High Court, held relying upon the earlier case of *Bunwari Lal* v. *Daya Sunker*,[3] and following the Full Bench of Madras High Court, in *Kesavarapu* v. *Kotta Kota*,[4] that the value of the appeal for the purposes of the Court-fee was the value of their shares in such properties, and that Sch. II, Art. 17, Cl. (6) of the Court-Fees Act did not apply to such a case. It has been pointed out by the Patna High Court,[5] that the decisions in the aforesaid Madras and Calcutta cases seem to be fully in accordance with S. 7, Cl. (i), under which the Court-fee payable is according to the amount claimed. Where the appellants claim exemption of their properties from the liability of the decree, they dispute the decree to the extent of the value of the properties held by them; and, if the value of the properties is less than the decretal amount, they should pay a Court-fee upon the value of the properties. If, however, the decretal amount is less than the value of the properties, they should pay Court-fee upon the entire decretal amount. "According to the Madras High Court then, the relief of exemption of property is not merely declaratory, and the value of the debt or the value of the property, whichever is less, determines

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(47) B.P.J., 1894, p. 153.

(48) *Ramasami* v. *Subbasami*, 13 Mad. 508; *also see* 12 C.P.L.R. 43.

(49) 30 Mad. 96=16 M.L.J. 458=1 M.L.T. 311.

(50) *See* f.-n. (9), (10); 4 Mad. 339.

(1) *See* f.-n. (39), (40)=1 I.C. 670=13 C.W.N. 815.

(2) 37 Cal. 914=8 I.C. 1145; also see *Jagat Dhar* v. *Brown*, 33 Cal. 1133=10 C.W.N. 1010=4 C.L.J. 121; and *Bibi Umatul Batul* v. *Nanji Koer*, 11 C.W.N. 705=6 C.L.J. 427.

(3) 1 I.C. 670=13 C.W.N. 815.

(4) 30 Mad. 96 (F.B.).

(5) *Madho Ray* v. *Mabhuwan Nissa*, 98 I.C. 807=5 Pat. 721=1927 Pat. 46.

the value of the relief in appeal for purposes of Court-fee in such cases. IN SHORT, THE LESS IS THE CRITERION.''[6] In *Khachera* v. *Kharag Singh*[7] it was held, following the Madras Full Bench, that Court-fee should be paid on the value of the property sought to be rendered liable in appeal. The Punjab Chief Court has held to the same effect, in *Tharumal* v. *Chandu Ram*[8], following the Madras Full Bench, that the memorandum of appeal seeking to have the property freed from the charge should bear an *ad valorem* Court-fee on the amount of the charge. And, the Lahore High Court has taken the same view in *Atma Singh* v. *Nathumal*,[9] where it was observed that ''the law is clear as to the proper Court-fee to be paid on such an appeal.'' All these decisions have been carefully reviewed in a Nagpur case, where the Judicial Commissioner holds that a Court-fee of Rs. 10 is not sufficient where in an appeal, the appellant seeks exoneration of any property from liability under the mortgage-decree or wants the appellate Court to make the excluded property also liable under the decree. ''It is the value of the debt, or the value of the property, whichever may be less, that determines the value of the relief in appeal for purposes of the Court-Fees Act.''[10] It may be observed that ordinarily, where the plaintiff is the appellant the Court-fee should not exceed the Court-fee paid on the plaint, but there is a string of rulings in which it has been held that where a plaintiff sues for possession claiming an unconditional decree or admitting his liability to pay a certain sum and the Court requires him to pay a sum which he disputes, and he appeals on the ground that he is not liable to pay that sum, he must pay *ad valorem* Court-fees on the amount in question.[11] This is on the ground that ''although it may be said that one object of the appellant is to get possession of certain property, his main object is to avoid payment of a certain sum.''[12]

(5) Where the plaintiffs instituted a suit claiming an ascertained sum of money from the defendants on account of cesses, and offering to pay additional Court-fee if a larger sum was found due, and the defendants denied that any amount was due;

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(6) *Punjaji* v. *Ram Chand*, 111 I.C. 650 (652)=1928 Nag. 316.

(7) 33 All. 20=7 A.L.J. 842=7 I.C. 315.

(8) 11 P.R. 1916=33 I.C. 138.

(9) 7 Lah. 215=96 I.C. 473=1926 Lah. 408; citing *Venkappa* v. *Narasimha*, 10 Mad. 187; the decision in which was approved by a Full Bench in *Kesavarapu* v. *Kotta Kotu*, 30 Mad. 96 (F.B.); and this Full Bench decision was followed in *Jugal Pershad* v. *Parbhu Narain*, (8 I.C. 145=37 Cal. 914); and *Tharu Mal* v. *Chandu Ram*, (11 P.R. 1916=33 I.C. 138).

(10) *Punjaji* v. *Ram Chand*, 111 I.C. 650 (652)=1928 Nag. 316.

(11) Per Chamier, J.C., in *Basdeo* v. *Sri Kishen*, 5 I.C. 941=13 O.C. 62; citing, *Ramadhin* v. *Hanuman*, (9 O.C. 153—a redemption suit, in which appeal challenged only the amount held payable by the mortgagor); 31 All. 265=1 I.C. 1000; *Ram Lakhan Rai* v. *Bandan Rai*, (1 Legal Remembrancer, 162); and *Rama Nand* v. *Ram Sukul*, (Second C.A. 296 of 1908).

(12) Per Evans, A.J.C., in *Basudeo* v. *Sri Kishen*, 5 I.C. 941=13 O.C. 62.

and the trial Court decided that cesses were due but left the determination of the amount to a Commissioner, it was held on the defendants' appeal denying their liability *in toto*, that the appellants were not entitled to value the appeal approximately but were bound to value it according to the valuation given in the plaint.[13] However, in suits for accounts and mesne profits, an approximate value is to be given.[14]

(6) No Court-fee is payable on memorandum of cross-objections, supporting the decree of the lower Court appealed against. This was so held, by the Allahabad High Court, in *Ram Parshad* v. *Mt. Ajanasia*,[15] on the ground that the decree of the Court of first instance dismissing plaintiff's suit can be supported by the respondent on any ground, even on a ground other than that taken by the Court of first instance, and two sums of Court-fees cannot be realised in respect of the same claim from both parties.

(7) Where a decree is passed in favour of the plaintiff but the Court directs payment in certain instalments, and the plaintiff appeals against that portion of the decree, it has been held, by the Calcutta High Court, that he is not bound to pay Court-fees on the sum decreed but on the difference between the amount claimed in the Court below and the sum of the present values of the instalments payable on the dates mentioned in the decree, this being the difference between the values of the reliefs claimed, and that granted by the decree.[16]

(*ii*) In suits for maintenance[64] and annuities[65] or other sums payable periodically[66]—according to the value of the subject-matter of the suit,[67] and such value shall be deemed to be ten times the amount claimed to be payable for one year;

Suits for maintenance and annuities.

Synopsis.

62. Legislative changes and local amendments.
63. Scope and applicability of the clause.
64. Suits for maintenance.
67. Annuities.
68. "Other sums payable periodically."
69. "Value of the subject-matter of the suit"—Jurisdiction.

Comments.

62. LEGISLATIVE CHANGES.—By Act V of 1922, (Madras), the following words have been introduced between "deemed to be," and "ten times"—*viz.* "In suits for maintenance, the amount claimed to be payable for one year, and in other suits."—This, in suits for maintenance, the Madras amendment

(13) *Phular Tand Coal Co.* v. *Burrakar Coal Co.*, 128 I.C. 795=1930 Pat. 605.

(14) 31 Cal. 365=8 C.W.N. 197; *also see* 2 Bom. 219 and 17 M.L.J. 625.

(15) 68 I.C. 861=44 All. 577=1922 All. 280.

(16) *Lukhun Chunder* v. *Khoda Baksh*, 19 Cal. 272, cited in In re *Pokkadi Achi*, 68 I.C. 444=45 Mad. 246=1922 Mad. 211.

has reduced the value for Court-fee to the amount claimed to be payable for one year, but "*in other suits*," *viz.*, for annuities or other sums payable periodically, the value remains to be "*ten times* the amount claimed to be payable for one year."

63. SCOPE AND APPLICABILITY OF THE CLAUSE— THIS CLAUSE IS TO BE DISTINGUISHED FROM THE PRECEDING CL. (i), which provides for cases where the suit for money is in respect of *arrears* of maintenance, of annuities, or of other sums payable periodically, which is always a definite amount. Clause (ii) provides for the mode of valuation for a suit for *maintenance*, annuity, or other sums payable periodically, and this would involve a determination of the right to receive in future the amount sued for, which obviously has to be indefinite in most cases. Where a suit is to secure a certain sum as *arrears* of annuity, and also to call upon the defendants to provide for the payment of maintenance, annuity, etc., in future, the first part of the claim will fall under Cl. (1), valued for the purposes of Court-fee at the actual amount claimed, and the second part of the prayer will fall under Cl. (2) of the section, liable to payment of Court-fee, on ten times the amount claimed as payable for one year.[17] A SUIT FOR DECLARATION OF RIGHT TO AN ANNUITY (*Varshasan*) is a claim falling under this clause, and the stamp-duty should be regulated at ten times the amount of the annuity this being assumed to be its market value.[18] If the sum payable periodically is not a fixed sum, and the right to payment is dependent upon services to be rendered, there is no present cause of action for a suit under Cl. (2).[19] But if the relief prayed for is for a declaration that the plaintiff, (and her legal representatives), are entitled in future, to receive from the defendant, and from certain property, A FIXED AMOUNT MONTHLY, ANNUALLY, OR PERIODICALLY, Cl. (ii) would be applicable, and the Court-fee leviable on ten times the amount claimed to be payable for one year.[20] A suit for a declaration of right that a fixed sum of money was settled to be the maintenance amount, and for amendment of a document by incorporating the maintenance clause, and, to the effect that defendant should pay the sum annually during the plaintiffs' lifetime is A SUIT FOR DECLARATION, WITH CONSEQUENTIAL RELIEF, which DOES NOT FALL UNDER CL. (ii) of S.7, but under Cl. (iv) (*c*).[21] Similarly, a suit for a declaration that the plaintiff is the owner of the Toda Giras

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(17) *Gurya Bai* v. *Har Kuar Bai*, (1886) 6 A.W.N. 228; also see *Krishnam* v. *Revi Varma*, 8 Mad. 384 (where the portion of prayer for future annual payments was struck out of the plaint, as no cause of action had accrued with respect to them); also see and cf. *Bhairar Dei* v. *Ram Sewak*, 1927 Oudh 623 (624)=1 Luck. Cas. 648; (*Held*, that a suit for *arrears* of maintenance is not a suit for maintenance, and, therefore, S. 7, Cl. (2), does not apply).

(18) 5 B.H.C.R. (A.C.J.) 55 (*Narsinvacharya* v. *Swami Rayacharya*), cited in 55 I.C. 809 (810).

(19) *Krishnam* v. *Revi Varma*, 8 Mad. 384.

(20) *Shahzadi Begum* v. *Mahbub Ali Shah*, (1920) 55 I.C. 809=42 All. 353=18 A.L.J. 328.

(21) *Bari Babu* v. *Kundensingh*, 71 I.C. 31=1922 Nag. 264.

Hak, as the heir of a deceased recipient of the Hak, and is as such entitled to recover it, falls within the purview of S. 7 (iv) (*c*) of the Court-Fees Act, and not within this Cl. (ii), and the Court-fee stamp would be according to the amount at which the relief sought, FOR DECLARATION WITH CONSEQUENTIAL RELIEF, was valued in the plaint, and not at ten times the amount claimed to be payable for one year.[22] Likewise, where a family arrangement provided for the residence and maintenance of a female member of the family, and by virtue of this arrangement she was enjoying her right of residence, and recovering the maintenance, and she subsequently brought a suit for declaration that she has a right to do so, and an injunction restraining the defendant from bringing the property to sale in execution of his decree, it was held that S. 7 (iv) (*c*), of the Court-Fees Act, and not S. 7 (ii) was applicable.[23] Under this clause, the Court-fee being determinable on the amount claimed to be payable in future, on the basis of the amount "payable for the year next before the date for presenting the plaint," the clause CANNOT APPLY TO A SUIT FOR ASSESSMENT OF RENT, where there was no rent payable previously.[24] A claim for future house-rent, is not one to which Cl. (ii) of the section can be rightly applied.[25] A suit for a declaration that the plaintiffs are entitled to certain properties subject to certain trusts (created by the will of the last owner in favour of some temples), and a provision for the maintenance of his son, is not governed by S. 7, Cl. (ii) of the Act, since the suit is not one for maintenance or any sum payable periodically.[26] Similarly, where the subject-matter of the suit was a claim for a certain sum of money, coupled with a claim for a declaration that it was realizable from the offerings to the idol and was recoverable from the successors in office of the defendant, and the Court below had allowed the former claim with a small reduction, the correctness of which was not questioned in appeal, but had disallowed the latter and the *appeal* was only against that part of the decision which related to the declaration, it was held that the memorandum of appeal was chargeable with a stamp as in a suit for a mere declaratory decree.[27]

64. SUITS FOR MAINTENANCE.—A suit for future maintenance, is clearly distinguishable from a suit for

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(22) *Bhimsangji* v. *Dolatsangji*, (1925) 87 I.C. 801=1925 Bom. 282=27 Bom. L.R. 247.

(23) *Hanifabai* v. *Tulsidas*, 123 I.C. 240=1930 Sind 198.

(24) *Dhanukhdhari* v. *Mani Sonar*, (1927) 100 I.C. 913 (914)=6 Pat. 17=1927 Pat. 123=8 P.L.T. 366; also see *Kalicharn* v. *Keshoprasad*, 51 I.C. 15=4 P.L.J. 561; (A suit for assessment of rent, and recovery of a specific sum of money as damages for use and occupation).

(25) Per Spankie, J., in *Chedi Lal* v. *Kiratte Chand*, 2 All. 682 (F.B.); (*Held*, that the application of Cl. (2) of S. 7, Court-fees seemed altogether wrong, where plaintiff was asking for house-rent in future, as he would ask for the mesne profits from the date of decree to the date of possession under the decree).

(26) *Andale* v. *Secretary of State*, 3 M.L.J. 242.

(27) *Girijanund* v. *Sailajanund*, 23 Cal. 645 (651).

arrears of maintenance or annuity falling under Cl. (i) of S. 7, of the Court-Fees Act.[28] Court-fee is payable under S. 7, Cl. (i), or S. 7, Cl. (ii), according as past or future maintenance is claimed.[29] A SUIT FOR MAINTENANCE INVOLVES A DECLARATION OF PLAINTIFF'S RIGHT to receive a sum of money as maintenance in future, and the decree should be worded so that it is not merely declaratory in form BUT IS EXECUTABLE, by directing the payment of the future maintenance,[30] in any given month, or upon any given day of a month[31]. It has been held, by a Full Bench of the Calcutta High Court, that future maintenance awarded by a decree when falling due can be recovered in execution of that decree without further suit.[32] A maintenance decree directing payment of a monthly sum, creates a periodically recurring right, to receive a fixed sum, and this form of decree has existed for a very long time.[33]

65. Where plaintiff prayed for relief (*a*) that it may be declared against the defendants that the plaintiff and her descendants, generation after generation, are entitled to receive from the defendants and their representatives, a fixed sum of money, per mensem, which is a charge on specified property, and (*b*) further for the recovery of an ascertained sum as arrears, it was held, that the relief (*a*) was one falling under Cl. (ii) of S. 7 of the Court-Fees Act, and the Court-fee was to be paid, accordingly, on ten times the amount claimed to be payable for one year.[34]

66. A SUIT FOR ENHANCEMENT OF MAINTENANCE IS STRICTLY WITHIN THIS CLAUSE, and plaintiff would be required to pay Court-fee on the difference between the amount already awarded, and the amount claimed. But a SUIT FOR REDUCTION OF MAINTENANCE is not a suit for maintenance falling within this clause, and it is in effect a suit for declaration, with or without consequential relief according to the frame of the suit.[35] Such a suit would lie,

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(28) *See* Para. 64, *ante*, as to scope of the clause, f.-n. (17).

(29) (1886) 6 A.W.N. 228; 8 Mad. 384; and 1927 Oudh 623 (624)= 1 Luck. Cas. 648.

(30) *Lakshman Ramchandra* v. *Satyabhamabai*, 2 Bom. 494 (497), per Westropp, C.J.:—Cited in *Vishu Shambhog* v. *Manjamma*, 9 Bom. 108 (110), per Sargent, C.J.

(31) *Ramdial* v. *Indar Kuar*, 16 All. 179=(1894) 14 A.W.N. 17 approving 9 Bom. 108 (110), *supra*.

(32) *Ashutosh Bannerjee* v. *Lukhimoni Debya*, 19 Cal. 139 (F.B.).

(33) *Peareenath* v. *Juggessuree*, (1871) 15 W.R. 128; *Smithayee* v. *Thanakapudayen*, (4 M.H.C. 183); *Tohfa Dipia* v. *Pirtheechund*, (1822) (3 S.D.S.R. 134); *Hursoonderi* v. *Nubogobind*, (6 S.D. 422); *Mt. Beelas Munjaree* v. *Aursoondree*, (7 S.D. 653); *Pirthee Singh* v. *Rani Raj Koer*, (1869) (12 B.L.R. 238); *The Collector of Madura* v. *Moottoo Ramalinga*, (12 M.I.A. 397) (P.C.); also see *Mansa Debi* v. *Jiwan Lal*, (9 All. 33); *Lakshman* v. *Satyabhama*, (2 Bom. 494); *Vishnu* v. *Manjamma*, (9 Bom. 108); *Lakshmibai* v. *Madhavrao*, 12 Bom. 65; *Muttia* v. *Virammal*, (10 Mad. 283).

(34) *Shabzadi Begum* v. *Mabhubali Shah*, 55 I.C. 809 (812)=42 All. 353; citing *Narsinvacharya* v. *Rayacharya*, 5 B.H.C.R. (A.C.J.) 55.

(35) *Vijaya* v. *Sripathi*, 8 Mad. 94; *Sreeram* v. *Puddomookhee*, 9 W.R. 152; *Ruka Bai* v. *Ganda Bai*, 1 All. 594.

as held in some cases, but the decree awarding maintenance can itself provide for alteration of amount on change of circumstances.[36]

67. ANNUITIES.—According to Stroud's Judicial Dictionary, an annuity is a yearly payment of a certain sum of money granted to another in fee for life or years charging the person of the grantor only.[37] An annuity does not generally extend beyond the life of the grantee, and it usually but not necessarily determines with the life of the grantor.[38] In a suit to recover a sum of money as annuity, S. 7, Cl. (ii) of the Court-Fees Act applies, and as in the case of suits for maintenance, the Court-fee is to be paid on ten times the amount claimed to be payable for a year.[39] But for the purpose of determining the probate fee to be paid in respect of an annuity, the word "Value" in Sch. I, Cl. (ii) of the Court-Fees Act, is taken to mean the market value of the annuity, which is not necessarily ten times the annual payment.[40] A suit to recover arrears of annuity payable under a will, and assented to by executors is a suit for money.[41] Where a decree is passed for payment of annuities in future, the arrears due under the decree can be recovered only by execution of the decree.[42]

68 "OTHER SUMS PAYABLE PERIODICALLY."—The words "other sums payable periodically", are general words which follow particular and specific words, "in suits for maintenance," and "annuities." As such, according to well-known principles of construction, "the general words must be confined to things of the same kind as those specified.[43] And, applying the rule of *ejusdem generis*, the Patna High Court has held that the generality of the expression "*other sums payable periodically*" must be limited by the specific words that precede, and, when so limited, S. 7, Cl. (ii) would read as follows:—"in suits for maintenance and annuities, or other sums of the same kind payable periodically . . . . ". Accordingly, A SUIT FOR ASSESSMENT OF RENT, and for recovery of a specific sum of money as damages for use and occupation is NOT ONE FALLING UNDER S. 7 (ii) OF THE COURT-FEES ACT, but is in the nature of a suit to obtain a declaratory decree where consequential relief is claimed.

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(36) *Gopikavai* v. *Dattatraya*, 24 Bom. 386.

(37) Encyclopædia of Indian Case Law, p. 529.

(38) Dr. Gour's Transfer of Property, 5th Edn., p. 417.

(39) *Shabzadi Begam* v. *Bahbubali Shah*, 42 All. 353=55 I.C. 809; *Guryabai* v. *Har Kuar*, 1886 A.W.N. 228; *Kalicharn Roy* v. *Maharajah*, 51 I.C. 15=4 Pat. L.J. 561; *Narasimhacharya* v. *Rayacharya*, 5 B.H.C.R. (A.C.J.) 55.

(40) In the mttter of Will of *Ramchandra Lakshmanji*, 1 Bom. 118; *also see* In the goods of *Ruston*, 3 Cal. 736 (capitalised value).

(41) *Dossai Bai* v. *Coover Bai*, 32 Bom. 575.

(42) *Sughra* v. *Mahd. Hussain*, 1888 A.W.N. 230.

(43) *R.* v. *Edmundson*, per Campbell, (1859), 28 L.J.M.C. 213=119 R.R. 631=121 E.R. 30; cited in *Kali Charn Roy* v. *Maharaja Kesho Prasad*, (1910) 51 I.C. 15=4 P.L.J. 561; folld. in *Dhanukhdhari* v. *Mani Sonar*, (1927) 100 I.C. 913 (915)=6 Pat. 17=1927 Pat. 123.

This construction was adopted as most beneficial to the subject.[44] A suit for a declaration that plaintiff, and her legal representatives are entitled, generation after generation, to receive from the defendant and from their property a fixed sum monthly, is a claim for a sum, other than maintenance or annuity which is payable periodically, and to a case like this Cl. (ii) of S. 7 fully applies.[45] But a suit for Khas possession and mesne profits and in the alternative for assessment of a fair and equitable rent, the alternative prayer was not treated as a prayer for declaration of title, but as a consequential relief, and the Court-fee was assessed in accordance with S. 7 (iv) (*c*) of the Court-Fees Act.[46] A suit for annual payment from out of the profits of a land,[47] or for annual emoluments of an office,[48] is not a suit falling under cl. (ii) of S. 7, but involves a declaration with consequential relief falling under S. 7 (iv) (*c*) of the Court-Fees Act.

69. **"VALUE OF THE SUBJECT-MATTER OF SUIT"—JURISDICTION.**—The value of a claim falling under S. 7, Cl. (ii) of the Act, is to be computed at ten times the amount payable for one year. This principle was applied to a declaratory suit, with consequential relief, in *Bari Babu* v. *Kundan Singh*[49] but the Court-fee stamp in cases falling under S. 7 (iv) (*c*), would be payable *ad valorem* according to the amount at which the relief sought was valued in the plaint.[50] And, in such a suit the value for purposes of jurisdiction is, under S. 8 of the Suits Valuation Act, the same as for Court-fee.[1] Where the value of plaintiff's claim was reduced in second appeal, by the amount already received, the Court-fee was payable upon the reduced claim.[2] The value of the subject-matter in dispute for the purpose of an appeal to His Majesty in Council in a suit to recover annuity is, under S. 110 of the Civil Procedure Code, the annuity which is sought to be recovered, not the value of the property upon which the annuity is charged.[3] The jurisdiction once determined according to the value of subject-matter at the time of the institution of the suit, which gives a vested right of

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(44) *Kali Charn Roy* v. *Maharaja Bahadur*, (*supra*), folld. in *Dhanukhdhari* v. *Mani Sonar*, (*supra*).

(45) *Shahzadi Begum* v. *Mahbuhali Shah*, (1920) 55 I.C. 809 (812)=42 All. 353=18 A.L.J. 328.

(46) *Dhanukhdhari* v. *Mani Sonar*, 100 I.C. 913=1927 Pat. 123=6 Pat. 17.

(47) (1883) B.P.J. 205.

(48) *Krishnam* v. *Revi Varma*, 8 Mad. 384.

(49) 71 I.C. 31 (32)=1922 Nag. 264 (Suit for annual payment consequent on the amendment of a document).

(50) *Bhimsangji* v. *Dolatsangji*, 87 I.C. 801=1925 Bom. 282=27 Bom. L.R. 247; also see *Dhanukhdhari* v. *Mani Sonar*, 100 I.C. 913=6 Pat. 17 =1927 Pat. 123.

(1) *Bhimsangji* v. *Dolatsangji*, *supra*.

(2) *Lukhun Chunder* v. *Khoda Buksh*, 19 Cal. 272; cited in *Dhankhdhari* v. *Mani Sonar*, 100 I.C. 913 (915)=6 Pat. 17=1927 Pat. 123.

(3) *Abid Husain Khan* v. *Ahmad Husain*, (1923) 75 I.C. 502=1923 P.C. 102=28 C.W.N. 289 (P.C.), etc.

appeal to a particular tribunal, cannot be affected by a subsequent amendment of the Court-Fees Act,[4] and, further, the money value of the original suit that fixes the jurisdiction throughout the subsequent litigation in its several stages,[5] and therefore the valuation of appeal could not be reduced according to the Act in force at the time of its presentation.[6]

Suit for other moveable property having a market-value.

(*iii*) In suits for moveable property[75], other than money, where the subject-matter has a market-value[77]—according to such value at the date of presenting the plaint.

Synopsis.

70. Scope of the clause, and its applicability.
74. Moveable property.
75. Documents.
76. Market-value.
77. Jurisdiction.

Comments.

70. SCOPE OF THE CLAUSE, AND ITS APPLICABILITY.—A suit to recover moveable property "other than money" "*where the subject-matter has a market-value,*" falls under this clause, and has to be valued for purposes of Court-fee "according to such value *at the date of presenting the plaint.*" Any subsequent increase or decrease in the market-value, is, therefore, immaterial. Where the moveable property sued for has no market-value, the claim would fall not under this clause, but under Cl. (iv) (*a*), which applies to suits for moveable property. "Where the subject-matter has no market-value," "as, for instance, in the case of documents relating to title".

71. A SUIT FOR THE RECOVERY OF THE PLEDGED PROPERTY must be on a stamp under this clause, according to the value of the property at the date of presenting the plaint in the suit. Such value may conceivably exceed the amount for which the property is pledged. A decree in such a suit can be given, in the alternative, for payment of such amount on delivery back of the said property, or for money payment less the paid amount.[7]

72. A SUIT FOR POSSESSION OF THE MONASTERY, (Thinghika, Sanghika), *i.e.*, property belonging to the monastic body, on the ground of the decision by the monastic authorities, is maintainable, and, even if the suit must be regarded as a suit to enforce an award, *i.e.*, for specific performance of an award, falling under S. 7 (x) (*d*) in either case, the Court-fee payable is

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(4) *Colonial Sugar Refining Co., Ltd.* v. *Irving*, (1905) A.C. 369=21 T.L.R. 513; also *Ratanchand* v. *Hanmantrav*, 6 B.H.C.R. 1166.

(5) *Muthusami* v. *Chidambara*, 7 M.H.C.R. 356.

(6) *Daivanayaga Reddiar* v. *Renukambal*, 106 I.C. 616=1927 Mad. 977=50 Mad. 857 (F.B.); overruling *Muttamal* v. *Chinnana*, 4 Mad. 220.

(7) D.C.R. (Cent. Prov.), Part V, 3; cited in Pindi Dass' Court-Fees Act.

ad valorem on the value of the property sought to be recovered from the defendant.[8]

73. The reliefs claimed in a SUIT UNDER S. 92, CIVIL PROCEDURE CODE, regarding trust properties, even though including a prayer for *possession*, are INCAPABLE OF VALUATION, as the plaintiffs sue merely in a representative capacity on behalf of the public, and not for their *own advantage*, and consequently such suits will not fall under this clause "for moveable property other than money," but would be CHARGEABLE UNDER ART. 17, CL. (6) OF THE COURT-FEES ACT, 1870.[9] A suit under S. 92, Civil Procedure Code, generally involves a question upon which no pecuniary value can be placed,[10] and even where the manager is sought to be removed, and another manager put in his place, it cannot be said that this is a suit involving the value of any portion of the trust property.[11] In the case of *Thakuri* v. *Brahma Narain*,[12] where the suit under S. 539, Civil Procedure Code, 1882, corresponding to S. 92, Civil Procedure Code, 1908, was substantially one for possession, the ALLAHABAD HIGH COURT refused to follow the principle laid down in *Sonachala* v. *Manika*,[13] observing that "if the principle laid down in that case were to be applied to a suit under S. 539 (=S. 92, Civil Procedure Code, 1908), and every suit under that section in which the appointment of trustees was prayed for, or the removal of a trustee was sought, had to be treated as a suit for possession of the property, the salutary provisions of that section would be seriously interfered with, and in many cases defeated." "Instances may often arise in which the trust property is of considerable value. If Court-fees had to be paid with reference to value whenever it was found necessary to bring a suit to remove a trustee who had committed a breach of his trust, such Court-fee might be prohibitive, and might prevent the institution of the suit."[14] Accordingly, it was held, that even the prayer that the plaintiffs themselves be appointed trustees is not a prayer for possession requiring a stamp on the value of the trust property, but it is a prayer for relief falling under Art. 17, Cl. 6, Sch. II of the Act, that is to say, a relief which it is not possible to estimate at a money value, and which is not otherwise provided for by the Act. In following this ruling in the case of

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(8) U.B.R. (1892-06), II, 59; and U.B.R. (1907, 1908), II, Buddhist Law Ecclesiastical, p. 1; cited in *Nga Chok* v. *Nga Du Gaing*, 4 I.C. 815=U.B.R. 1909, II, Buddhist Law, Ecclesiastical, p. 5.

(9) *Ramrupdas* v. *Sujaramdas*, 7 I.C. 92 (94) (Cal.); *also see* 8 Lah. 730=110 I.C. 264=1928 Lah. 113; following, 19 All. 60=(1896) All. W.N. 187; 21 All. 200 (203)=(1899) A.W.N. 32; and 47 I.C. 983 (984)=97 P.R. 1918; and see *Sudalaimuthu* v. *Periasundaram*, 87 I.C. 25=1925 Mad. 722; cf. *Ramanuja* v. *Alagappa*, 85 I.C. 801=1924 Mad. 882.

(10) *Ramsupdas* v. *Sujaramdas*, 7 I.C. 92 (94) (Cal.).

(11) *Ibid.*

(12) 19 All. 60=16 A.W.N. (1896), 187..

(13) 8 Mad. 516; *also see* 10 Cal. 599.

(14) *Thakuri* v. *Brahma Narain*, 19 All. 60.

Girdhari Lal v. *Ram Lal*[15] the same learned Judges held that the mere fact that the plaintiffs in the suit, under S. 539, Civil Procedure Code, 1882 (=S. 92, Civil Procedure Code, 1908), may ask for an account to be taken from the trustees and that the trustees may be compelled to refund monies alleged to have been misappropriated by them, does not take the case out of the purview of Art. 17, Cl. (6), Sch. II of the Court-Fees Act, and render the plaintiff liable to pay an *ad valorem* Court-fee on that part of their plaint. A similar view was taken in a later case, *Gharaffar Husain Khan* v. *Yawar Hussain*,[16] and in that case following the decision of CALCUTTA HIGH COURT in *Sajedar Raja Chowdhry* v. *Gour Mohun Das Baishnav*,[17] it was held that a suit for dismissal of trustees and for recovery of the trust property from the hands of a third party fell within the scope of S. 539, relying upon the words in the section "such further, or other relief as the nature of the case may require." The Allahabad ruling was followed by the Calcutta High Court in *Ramrup Das* v. *Sujaramdas*,[18] and in *Beli Ram* v. *Ishardas*, by the LAHORE HIGH COURT,[19] where it was held that in a suit instituted under S. 92, Civil Procedure Code, including a relief that the property of the trust may be made over to the new Mahant, and the newly appointed committee and a list of the said property may be prepared, there was nothing in the reliefs claimed which would take the case out of the purview of Art. 17, Cl. (6) of the Court-Fees Act, and that a Court-fee of Rs. 10 alone was sufficient. THE MADRAS HIGH COURT, likewise, has held in *Sudalai Muthu Pillai* v. *Peria Sundaram*,[20] that a suit under S. 92, Civil Procedure Code, praying that the defendant trustee should refund to the trust a specified amount misappropriated by him and also that certain properties should be handed over to the new trustees to be appointed under the scheme to be framed by the Court falls under Art. 17, Cl. (6) of Sch. II to the Court-Fees Act. It is to be noticed that this Madras case was under the old Act, and followed the tendency in such cases to hold that a Court-fee of Rs. 10 is sufficient. But under the (Madras) Court-fees (Amendment) Act of 1922, there is a clear ruling by Venkatasubba Rao, J. in *Ramanuja* v. *Allagappa Chetty*, that a single

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(15) 21 All. 200.

(16) 28 All. 112=2 A.L.J. 591=(1905) A.W.N. 208.

(17) 24 Cal. 418.

(18) 7 I.C. 92 (94) (Cal.).

(19) 110 I.C. 264=8 Lah. 730=1928 Lah. 113; citing *Ramrupdas* v. *Sujaram Das*, 7 I.C. 92=14 C.W.N. 932=12 C.L.J. 211; *Thakuri* v. *Brahma Narain*, 19 All. 60=(1896) A.W.N. 187; *Girdharilal* v. *Ramlal*, 21 All. 200=(1899) A.W.N. 32; and *Gopi Das* v. *Lal Das*, 47 I.C. 983=97 P.R. 1918; cf. *Umrao Mirza* v. *Jones*, 10 Cal. 599 (A case not under S. 599 of the Old Code of Civil Procedure).

(20) 87 I.C. 25=1925 Mad. 722=48 M.L.J. 514=1925 M.W.N. 104; following *Ramrupdas* v. *Sujaram Das*, 7 I.C. 92=12 C.L.J. 211=14 C.W.N. 932 not foll.; *Srinivasa* v. *Venkata*, (11 Mad. 148),—the observation that if damages on account of misappropriated moneys are claimed, Court-fee will have to be paid on such amounts, was *obiter*. Refer *Ramanuja*

Court-fee of Rs. 50 only need be paid in such cases,[21] under Art. 17 (iii) of Sch. II to the Court-Fees Act, and the sum mentioned in the plaint, as his valuation of the relief cannot alter the character of the suit.

74. MOVEABLE PROPERTY.—According to the definition in S. 22, Indian Penal Code, the words "moveable property," are intended to include corporeal property of every description, except lands and things attached to the earth or permanently fastened to anything which is attached to the earth. The General clauses Act I of 1868, S. 2 (6) says that "moveable property" shall mean property of every description except immoveable property". The Indian Registration Act XVI of 1908, S. 3, says that that "moveable property" includes standing timber, growing crops, and grass, fruit upon and juice in trees, and property of every other description, except "immoveable property". The expression "immoveable property", is defined in General Clauses Act, (X of 1897) S. 3 (25); also see Registration Act, S. 2 (6), and Transfer of Property Act, S. 3. Any part of "the earth," when severed from the earth, is moveable property.[22] "*Immoveable property,*" as defined by the General Clauses Act, "shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth." It has been however used in varying senses in different Acts of the Legislature.[23] Standing crops,[24] growing crops and trees[25] are held not to be moveable property within the meaning of the Limitation Act, the Small Cause Courts Act, (XI of 1865) and the Civil Procedure Code, 1882, and the Provincial Small Cause Courts Act (IX of 1887).[26] All these are, however, expressly declared to be *moveable property* under Cl. 3 of the Transfer of Property Act.[27] The new definition of *moveable property,* in S. 2 (13) of the present Code of Civil Procedure, negatives the view taken by the decisions under the Old Code, that growing crops are immoveable property.[28] But this definition is con-

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v. *Alagappa,* 85 I.C. 801=1924 Mad. 882 (A single Court-fee of Rs. 50 need be paid under the new Court-Fees Act).

(21) 85 I.C. 801=1924 Mad. 882, *supra.*

(22) *Queen-Empress* v. *Shivram,* (1891) 15 Bom. 702; *Suri Venkatappayya* v. *Madula Venkanna,* (1904) 37 Mad. 531 (535) (F.B.).

(23) See *Indian Trustee Act,* XXVII of 1866, S. 2: and *Indian Registration Act,* III of 1877, S. 3: *Registration Act,* XVI of 1908, S. 2 (6); *Indian Succession Act,* X of 1865, S. 3.

(24) *Pandah Gazi* v. *Jennuddi,* 4 Cal. 665; *Nattumiah* v. *Nandrani,* 8 B.L.R. 509; *Tafail Ahmad* v. *Banee Madhub,* 24 W.R. 394.

(25) *Gopal Chandra* v. *Ramjan,* 5 B.L.R. 194; In re *Hormasji Irani,* 13 Bom. 87.

(26) *Madaya* v. *Venkata,* 11 Mad. 193; *Cheda Lal* v. *Mulchand,* 14 All. 30; *Ganga Prasad* v. *Narain,* 1 All. 394..

(27) *Rajchandra Bose* v. *Dharmachandra,* 8 B.L.R. 510.

(28) *Cheda Lal* v. *Mulchand,* (1892) 14 All. 30 (34); *Sadhu* v. *Sambhu,* 6 Bom. 592 (593); In re *Hormasji,* 13 Bom. 87 (89); *Suratlal* v. *Umarhaji,* 22 Cal. 877 (885); *Manghun* v. *Dolhin,* 25 Cal. 692 (699); *Madayya* v. *Venkata,* 11 Mad. 193 (196); *Murlidhar* v. *Molu,* 27 I.C. 935 (937)=11 N.L.R. 18; *Abdullah* v. *Asrafali,* 7 C.L.J. 152 (166).

fined to the purposes of the Code only.[29] The question, therefore, arises, what is the meaning of the expression, "moveable property" as used in this clause. The term is not defined in the Act, and so the definition in General Clauses Act (X of 1897) S. 3 (25) will have to be taken as applicable.

75. DOCUMENTS.—Moveable property includes documents. The decisions are not unanimous as to how a suit for the recovery of a bond, or document is to be valued for purposes of Court-fees. A DOCUMENT OF TITLE is a typical case of moveable property, but it has no assessable market-value, and provision has been made for it specifically in Cl. (iv) (*a*) of the Act, under which Court-fees has to be paid *ad valorem* according to the amount at which the relief sought is valued in the plaint.[30] In *Chetsingh* v. *Mulsingh*,[31] the Punjab Chief Court, held that a suit to recover possession of bonds executed in plaintiff's favour by third parties which had been entrusted to defendant as plaintiff's agent, was a Small Cause suit, and that "as bonds have a value in themselves as forming additional security for rights they should be held to be property. They must not be valued as so many pieces of paper or manuscript. They must have their value stated in the plaint and that could be nothing less than the amounts for which they were held as securities." But, in *Salig Ram* v. *Dewan Mahomed Fazl-ullakhan*.[32] where the suit was for the recovery of certain mortgage-deeds on the ground that the amount of the deeds had not been paid, and the defence was that it had been paid, the Chief Court, held that the real point in issue was not whether plaintiff was entitled to recover the documents, but whether the amount had been repaid. Accordingly, the valuation of the suit for purposes of jurisdiction was made to depend upon the amount in contest, and the suit fell for purposes of Court-fee under this Cl. (iii) of S. 7 of the Court-Fees Act. There must be considerable difficulty, however, in assessing the market-value of a document, as it depends on so many considerations besides the ostensible figure for which the bond has been executed. A plaintiff, if left to himself, may put a mere nominal value on the document, while on the other hand it might be inequitable to declare the market-value at the exact amount secured by the bond. As observed by Mr. Satyamurti Ayyar, "the Court will have to consider on the merits of each case whether the valuation is proper, and adequate."

76. MARKET-VALUE.—No hard and fast rule is possible in such cases but it may be safely suggested that *the amount recoverable on the document*, should be the criterion in these cases of its market-value. If the document passes title to property by mere delivery, the value of the property to which it

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(29) *Murlidhar* v. *Mobu*, (1915) 27 I.C. 935 (936); *Devarasetti* v. *Devarasetti*, 31 I.C. 796=18 M.L.T. 532.

(30) *Naro Chumnaji* v. *Ram Bai*, (1894) B.P.J., p. 145 (Suit for delivery of a bond, and for injunction).

(31) 10 P.R. 1871.

(32) 39 P.R. 1875.

relates may be taken to be its value. If, however, the document has a value to a particular person, and has no value to others, its value to the person claiming it shall be the value fixed by him. *See* S. 7 (iv) (*a*).[33] In most cases, the market-value of a document is its value to the party concerned, but face value of a bond, or General Property Note, has been taken as the market-value in some reported cases.[34]

77. JURISDICTION.—The usual practice is to have suits for recovery of documents, with a definite money claim in the alternative, if the defendant fails to deliver the documents sued for, and this money claim represents the market-value of the documents both for purposes of Court-fee and jurisdiction.

(*iv*) In suits—

for moveable property of no market-value;

(*a*) for moveable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title,

to enforce a right to share in joint family property;

(*b*) to enforce the right to share in any property on the ground that it is joint family property,

for a declaratory decree and consequential relief;

(*c*) to obtain a declaratory decree or order, where consequential relief is prayed,

for an injunction;

(*d*) to obtain an injunction.

for easements;

(*e*) for a right to some benefit (not herein otherwise provided for) to arise out of land, and

for accounts;

(*f*) for accounts—

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits the plaintiff shall state the amount at which he values the relief sought.

Synopsis.

78. Legislative changes.
79-80. Local amendments.
81. Scope and applicability.
82. Valuation of suit at option of plaintiff.
83. Power of Court whether to revise such valuation.
84. Valuation in appeal.
85. Jurisdiction,—Valuation of suit.

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(33) Muthuswamy's Court-Fees Act, pp. 80, 81.

(34) *Chetsingh* v. *Mulsingh*, 10 P.R. 1871; cf. *Salig Ram* v. *Mahomed Fazlullahkhan*, 39 P.R. 1875; and *Mahomed Masik* v. *Malkai Mukhadrai*, 10 Cal. 380 (Suit to set aside a trust-deed, and to recover trust money, valued for appeal, the same as for plaint in the suit at the amount of promissory notes in question).

Comments.

78. LEGISLATIVE CHANGES.—The words "and the provisions of the Code of Civil Procedure, 1859, S. 31, shall apply as if for the word 'claim' the words 'relief sought' were substituted" at the end of the paragraph have been repealed by Act XII of 1891.

79. LOCAL AMENDMENTS—Bombay.—By Bombay Act II of 1932, the words "other consequential relifes" have been added to Cl. (*d*) of this paragraph.

80. Madras.—By Madras Act V of 1922, a proviso relating to the valuation of immoveable property is added to Cl. (c) as the penultimate paragraph. A new paragraph 7 (iv) A, relating to the valuation of suits for cancellation of decree or document is added.

81. SCOPE AND APPLICABILITY.—This paragraph (iv) comprises six clauses relating to six different classes of suits, and omitting Cl. (*b*), "it is to be observed that all the suits in the paragraph are claims for a relief which is not properly assessable in money."[35] It is further observable, that "in all of the ten clauses in S. 7, with the single exception of Cl. (iv), the Legislature has prescribed an *ad valorem* system or some guide whereby the valuation for the purposes of the Act may be ascertained. But the nature of the suits comprised in the six articles of that clause, which in some instances renders it impossible or generally extremely difficult to lay down an even approximately fair *ad valorem* scale as a means of fixing the Court-fee in such suits, would appear fully to account for the Legislature leaving it to the plaintiff to name the valuation, as it *prima facie* appears to do in enacting that the amount of fee shall be computed "according to the amount at which the relief sought is valued in the plaint."[36] As remarked in the statement of objects and Reasons for the New Court-Fees Bill, "it is agreed that paragraph IV of S. 7, which deals with the cases in which the plaintiff is allowed to value the relief sought is very unsatisfactory." As regards application of particular clauses it has been held by the Madras High Court[37] that the application of any particular clause of S. 7 must depend on the substance of the claim and not on the mere words used in the plaint. A further rule to be observed is that regard is to be had to the frame of the plaint, *viz.*, the Court-fee payable has to be determined on the nature of the allegations in the plaint and not on what is set

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(35) Per Batchelor, J., in *Dadgu* v. *Sitaram*, 33 Bom. 658=11 Bom. L.R. 1074=4 I.C. 243.

(36) Per Westropp, C.J., in *Mandhar Ganesh* v. *Bawa Ramcharandas*, 2 Bom. 219=2 Ind. Jur. 602.

(37) *Alagar Iyengar* v. *Srinivasa Iyengar*, (1925) 91 I.C. 709 (711) =1925 Mad. 1248=50 M.L.J. 406; *also see* 30 Mad. 18; 28 I.C. 79 =38 Mad. 922 (F.B.); 1933 Mad. 439 (a); and *see* Para. 55 (3) for Calcutta, Nagpur and Patna cases to same effect.

up or pleaded in the defence.[38] For the purpose of ascertaining the Court-fee payable one must have regard to the allegations in the plaint and it is not the function of the Court to ask itself, whether those allegations are true or probable.[39] "In such an Act as the Court-Fees Act, if there is a special provision which applies to a particular case, then that special provision must be applied by the Court rather than some general classification, in which the suit may also be included, which may be more favourable to the plaintiff."[40]

82. **VALUATION OF SUIT AT OPTION OF THE PLAINTIFF.**—As observed, the Westropp, J.; in a Bombay case,[41] there are strong reasons, in the case of each of the six classes of suits which comprise Cl. (4) of S. 7, why the valuation of relief sought in the plaint should be left to the plaintiff, or his pleader who prepares the plaint. In class (*a*) the property has no market-value. In class (*b*), the proper valuation is very difficult, and especially for a parcener other than the family manager. In class (*c*) numerous divergent views are possible as to what is the primary, and what is the auxiliary relief. In classes (*d*) and (*e*), it would be impossible to name any except a fancy value. In class (*f*), the party suing for an account, would be quite unable to state what the balance due to him may be," and if the defendants have withheld their books, "the plaintiff would not, in all probability, be able to make any trust-worthy estimate of the deficiency, if any, in their accounts," and the Court would find "much greater difficulty in conjecturing what that deficiency may be".

83. It is a CARDINAL RULE OF CONSTRUCTION OF STATUTES IN GENERAL that where the words used are *clear and unambiguous*, it is the plain duty of the Court to give effect to them, according to their plain literal sense, neither adding to, nor subtracting from them, with a view to any suggested improvement, or to avoid any hardship, or even absurdity, inconvenience or injustice.[42] Where

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(38) *Sivasubramania* v. *Subramania*, 1932 Mad. 409=138 I.C. 88=35 M.L.W. 393; *also see* Para. 55 (1), (2), *ante*.

(39) *Secretary of State* v. *Lakhanna*, 1933 Mad. 430=141 I.C. 89=64 M.L.J. 24=1933 M.W.N. 144; also see *Manikkam Pillai* v. *Murugesam*, 1933 Mad. 431=64 M.L.J. 576=37 M.L.W. 748.

(40) *Venkatasiva Rao* v. *Venkatanarasimha*, 1932 Mad. 605 (608)=139 I.C. 317=63 M.L.J. 764=36 M.L.W. 225=1932 M.W.N. 992.

(41) Per Westropp, C.J., in *Mandhar Ganesh* v. *Bawa Ramcharndas*, 2 Bom. 219=2 Ind. Jur. 602.

(42) *See* Para. 7, *ante*, as to principles of construction of statutes; and, also see *Karimbhai Abdul Hussain* v. *Ahmedali Lukmanji*, 1933 Bom. 91 (A Court can only deal with an Act as it stands, and it is for the legislature to amend or to remedy existing defects); *Srinivasa Rajamani* v. *Senapathi*, 1932 Mad. 612 (F.B.); (the Court has to deal with what the legislature has put before it, and it is not at liberty to turn itself into a legislative body for the purpose of supplying deficiencies in a Statute); *Mercantile Bank of India* v. *Official Assignee*, 1933 Mad. 207 (The duty of a Court is not to draft laws so that they may be just or reasonable or constant to accepted principle).

the language is plain, the Court cannot be influenced by *any extraneous consideration*, as to the supposed policy or intention of the law, or any general principles of law or equity.[43] A Court in interpreting a statute has no right to remedy its defects or to supply its omissions, nor is it entitled to modify the plain meaning of the language used by the Legislature in order to avoid any undesirable consequences.[44] A Court cannot read into a statute words not found there, unless the necessary implication of the context so requires it,[45] and clear words cannot be destroyed on the ground of equity or unreasonableness,[46] nor express provisions modified or nullified with reference to any practice of the Court.[47]

84. The Court-Fees Act is a fiscal measure and is to be construed strictly and in favour of the subject.[48]

Accordingly, it has been held in a series of rulings, by the High Courts in India, that the S. 7, Cl. 4, gives an absolute and unfettered discretion to the plaintiff to put his own arbitrary valuation in suits of the six descriptions named, and that the Court has got no power to curtail this discretion in any way, and to determine the proper value of the claim which the plaintiff ought to put.[49]

85. Allahabad.—It was held, by the Allahabad High Court, in *Ostoche* v. *Haridas*,[50] that "under the Court-Fees Act, the valuation of the relief sought rests with the plaintiff and not with the Court" and, in *Jogal Kishore* v. *Bindeshri Chanbey*,

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(43) *Nannu Mal* v. *Ram Chander*, 1931 All. 277 (F.B.) (A clear provision of Statute has to be followed, and given effect to, and it cannot be displaced by a mere equitable principle, however, wholesome it might be); 1933 Pesh. 3, at p. 5=22 I.C. 503 (506)=111 P.R. 1913 (F.B.).

(44) 9 Lah. 689=113 I.C. 769=1928 Lah. 337; 133 I.C. 587 (589); 135 I.C. 119 (130); 1928 Mad. 746.

(45) *Damodar Das* v. *Jaboo Singh*, 39 I.C. 87 (88); *Ram Sarup* v. *Gaya Prasad*, 90 I.C. 180=48 All. 175=1925 All. 610 (612).

(46) *Baijnath* v. *Rajjusingh*, 1926 Oudh 101 (111)=91 I.C. 583.

(47) *Velayutha* v. *Govindasami*, 4 I.C. 1115 (1116); *Nandi Ram* v. *Jogendra*, 82 I.C. 297.

(48) *See* Para. 7, *ante*, citing 1918 P.C. 188; 51 P.R. 1897 (F.B.); 58 Cal. 474; 1925 Sind 67; 1931 Mad. 525 (683); 1931 Nag. 156 (F.B.), etc.

(49) 2 All. 869; 4 All. 329; *cf.* 36 All. 500=24 I.C. 679; and 47 All. 501; *also see* 66 I.C. 841=1922 All. 228; and 47 All. 756=89 I.C. 122=1925 All. 787; and *see* 2 Bom. 219; 8 Bom. 31; 17 Bom. 56; *cf.* 31 Bom. 73; *see* 33 Bom. 307 (311); and 33 Bom. 658 (664); 44 Bom. 331 (335); 56 Bom. 23=137 I.C. 702=1932 Bom. 111; and, *cf.* 17 Cal. 680; *see* 32 Cal. 734; *cf.* 6 C.L.J. 427=11 C.W.N. 705; 17 I.C. 162=21 I.C. 404 (771); *see* 50 Cal. 604=75 I.C. 474=1923 Cal. 331; and *cf.* 86 I.C. 853=1925 Cal. 814 (815); and *see* 111 P.R. 1913 (F.B.); 66 I.C. 34 (36)=1922 Lah. 236; 2 Lah. 114; 94 I.C. 650=1926 Lah. 242; 91 I.C. 32=1926 Lah. 189; 66 I.C. 841=44 All. 542=1922 All. 228; 107 I.C. 609=9 Lah. 366=1927 Lah. 890; *also see* 15 Mad. 294; 20 Mad. 289; 23 Mad. 490; 24 Mad. 34; 27 Mad. 480; 1931 Mad. 94 (96)=129 I.C. 824: 1931 Mad. 375=132 I.C. 129; 1932 Mad. 565=137 I.C. 871; 1933 Mad. 330=141 I.C. 602.

(50) 2 All. 869.

that in a suit for a declaratory decree, in which consequential relief is sought, falling under S. 7, Cl. 4 (*c*), Court-Fees Act, the valuation for purposes of Court-fee and jurisdiction rests with the plaintiff.[1] However, in *Mt. Jageshra* v. *Durga Prashad*,[2] Tudball, J. expressed "considerable doubt as to whether plaintiff is entitled to put on it a fictitious value and not the correct and proper value which is known to him," though he found it "really unnecessary to express an opinion on it;" and, Richards, C. J. while holding that "it is quite clear that under the provisions of section (Cl. 4), the plaintiff has to pay an *ad valorem* Court-fee according to the amount at which the relief sought is valued," went on to explain "that the proper meaning to be attached to the latter words is that the plaintiff shall *truly state* the amount at which he values the relief sought, and that it cannot mean that a plaintiff is entitled to put in a fictitious value when the relief is capable of valuation."[2] [It may be observed that the words "truly state" are an *addition*, or an improvement, but this interpretation would be inadmissible according to the canon of construction above referred to that Court cannot read into statute words not found there.] It was again held in *Makbom Lal* v. *Surju Prasad*,[3] in a suit falling under S. 7, Cl. 4 (*c*), of the Act, that "the plaintiff in such a suit must pay Court-fees on the value of the claim as stated in the plaint." Similarly, in *Pirya Das* v. *Vilayat Khan*.[4] In *Manni Lal* v. *Thakur Radhey Gopalji*[5] the ruling in *Jageshra* v. *Durga Prasad Singh* is cited, and the Court was "not prepared to recommend a reconsideration of that decision," although it was arguable that on the wording of the section "the relief sought" means the "consequential relief" spoken of in sub-Cl. (*c*). It was not desired "to unsettle the law laid down by a Bench of two Judges more than ten years ago." The Court accepted the contention "that the value for purposes of Court-fees is to be determined first, and that for purposes of jurisdiction must follow on the same," but it was observed that "the plaintiff in a suit in which consequential relief is prayed cannot at one and the same time obtain the services of the highest possible tribunal for the determination of his claim, and evade the payment of *ad valorem* Court-fees." It was held, therefore, that "if for purposes of jurisdiction he sets a high value on the relief by way of declaration, and a merely nominal value on the relief by way of injunction, it is doing him no injustice to hold that the "*relief sought*" on which the Court-fee must be levied, is the sum total of the two reliefs."[6] In suits for account, falling under S. 7,

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(1) 4 All. 320=(1882) 2 A.W.N. 44.

(2) 24 I.C. 679 (682)=36 All. 500.

(3) 1885 A.W.N. 48.

(4) 22 All. 384=1900 A.W.N. 119.

(5) 87 I.C. 190 (194)=47 All. 501=1925 All. 602; citing 24 I.C. 679=36 All. All. 500.

(6) *Manni Lal* v. *Thakur Radhey Gopalji*, 87 I.C. 190 (194)=47 All. 501=1925 All. 602; *also see* and *cf.* 50 All. 610=1928 All. 248=26 A.L. J. 316=115 I.C. 655.

Cl. (*f*), the Court held, that the valuation in an appeal from a preliminary decree, rests with the defendant appellant, who may put his own valuation on the memorandum of appeal, and pay Court-fee accordingly.[7] Similarly, in partnership suits falling under sub-Clause (*f*) of S. 7 (4), the defendant's right to give his own valuation could not be challenged.[8] The High Court observed that "the statute must be construed in favour of the subject who has to pay the Court-fees, adding that, "if the Legislature considers that the language is defective, it is for the Legislature and not the Court to cure the defect. The words must be interpreted as they stand." It was pointed out that "it follows that in cases WHERE THE VALUATION HAS OF NECESSITY TO BE ARBITRARY AND TENTATIVE, the person who has to present a petition of plaint or appeal, and who is called upon to pay the necessary Court-fee, will have to fix the valuation, and unless the Court is of opinion that the valuation has been put down fraudulently, it will be difficult not to accept the valuation so made.[9] The Court was quite "conscious of the fact that in some cases this interpretation of the section will be unsatisfactory and may lead to inconvenience, . . . and the absence of uniformity (of valuation by Plaintiff and Defendant in different stages of same litigation, in a suit for account) was "likely to be embarrassing, but the result is due to the drafting of the section as it stands."[10]

86. Bombay.—In *Manohar Ganesh* v. *Bawa Ramcharudas*,[11] Westropp, C.J., explained that the nature of the suits comprised in the six articles of Cl. (4) of S. 7 of the Court-Fees Act, which in some instances renders it impossible, *e.g.*, in Art. (*a*), and in others either impossible or generally extremely difficult to lay down an even approximately fair *ad valorem* scale as a means of fixing the Court-fee in such suits, would appear fully to account for the Legislature leading it to the plaintiff to name the valuation, in such cases; and that it was "at least some incongruity," "if not absolute repugnancy," in treating the Judge as at liberty by S. 31 of the Civil Procedure Code, 1882, to pronounce the relief sought to be "improperly valued."[11] In *Lakshman* v. *Babaji*,[12] it was broadly laid down that "what *prima facie* determines the jurisdiction is the claim, or subject-matter of the claim, as estimated by the plaintiff;" but in that case West, J. also said: "An exaggerated claim thus brought for the purpose of getting

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(7) *Kanhaiya Lal* v. *Ram Sarup*, 44 All. 542=66 I.C. 841=1922 All. 228=20 A.L.J. 416.

(8) *Chunni Lal* v. *Sheo Charan*, 47 All. 756=89 I.C. 122=1925 All. 787=23 A.L.J. 725.

(9) Per Sulaiman, J., in *Chunni Lal* v. *Sheo Charan Lal*, 89 I.C. 122=47 All. 756=1925 All. 787=23 A.L.J. 725.

(10) *Ibid.*, per Sulaiman, J., *supra*.

(11) 2 Bom. 219.

(12) (1883) 8 Bom. 31; folld. in *Jasodha* v. *Chhotu*, 34 Bom. 236=4 I.C. 836=11 Bom. L.R. 1352.

a trial in a different Court from the one intended by the Legislature is substantially a fraud upon the law, and must be rejected, whether it arises from mere recklessness or from an artful design to get the adjudication of one Judge instead of that of another.'' In *Sardar Singhji* v. *Ganpat Singhji*,[13] reference has been made to the decisions of Allahabad High Court in *Ostoche* v. *Haridas*,[14] and *Jogal Kishore* v. *Tale Singh*,[15] and relying upon *Manohar Ganesh* v. *Bawa Ramcharudas*,[16] it was held that the valuation ''did not form part of the functions of the Court, but could be made by the plaintiff as he pleased.''[17] The ruling in *Dayaram Jagjivan* v. *Gordhan Das Dayaram*,[18] concerned the interpretation of Ss. 8 and 11 of the Suits Valuation Act, in connection with suits for declaration with consequential relief, falling under S. 7 (4) (*c*), of the Court-Fees Act, and Russel, Ag. C. J., observed that under S. 8 of the Suits Valuation Act, ''the value *as determinable* for the computation of Court-fees and the value for the purposes of jurisdiction shall be the same,'' and held that the word 'determinable' implied ''by the Court who has to try the case:'' and ''whether or not a suit has been properly valued is a preliminary question which ought to be disposed of before the case goes to trial.''[19] The ruling of Calcutta High Court in *Boidya Nath* v. *Mabhanlal*,[20] was relied upon for the view that Legislature never intended to leave it to the plaintiff to choose the Court in which he should bring his suit (for possession of partition of property) by assigning an arbitrary value to the subject-matter of the suit, and the provisions of the Suit Valuation Act VII of 1887, Ss. 7, 8 and 11 were considered to ''clearly indicate that that is not the intention of the Legislature.'' Ason, J in the same case, observed, that ''there is no express provision in the Suits Valuation Act making the valuation for the purposes of jurisdiction *prima facie* determinable by the plaintiff in any suit which can be valued lower for the computation of Court-fees;'' and he held that the value must be (where disputed) determined by judicial decision in the suit, such determination being subject to the provisions of S. 11 of the suits valuation Act, VII of 1887. This ruling was distinguished in *Vachlhani Keshabhai* v. *Vachhani Nanbha Bavaji*,[21] on the ground that ''the learned Judges there treated it as a suit in which there was a claim for possession,'' and following the view taken by the Calcutta High Court in *Hari Sanker Dutt* v. *Kalikumar Patra*,[22]

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(13) 17 Bom. 56, citing.

(14) 2 All. 869.

(15) 4 All. 320.

(16) 2 Bom. 219 (226, 227).

(17) Per Telang, J., in 17 Bom. 56 (61).

(18) 31 Bom. 73=8 Bom. L.R. 885.

(19) Per Russel, A.C.J., in *Dayaram Jagjivan* v. *Gordhandas Dayaram*, 31 Bom. 73 (77), citing *Joytara Dassee* v. *Mahomed Mobarack*, 8 Cal. 975; and *Bai Maberbai* v. *Maganchand*, 29 Bom. 229.

(20) 17 Cal. 680 (683).

(21) 33 Bom. 307 (311)=1 I.C. 108.

(22) (1905) 32 Cal. 734.

it was held that in a suit for a declaration and consequential relief the Court must accept the value of the relief stated in the plaint for the purpose both of the Court-fees and jurisdiction, and that the words of S. 8 of the Suits Valuation Act VII of 1887 lead to that conclusion.[23] In *Dagdu* v. *Tota Ram*,[24] the difficulties besetting the question of Court-fee in a suit falling under S. 7 (iv) (*b*), were got over by holding that the suit for partition of certain houses, sites, and lands, in which the valuation for Court-fee was assessed differently to its market-value, fell under S. 7 (v) of the Court-Fees Act, and that in consequence S. 8 of the Suits Valuation Act, 1887, did not apply. The decisions of the Bombay High Court are to the effect that it is open to the plaintiff to put his own valuation on the claim for the purpose of Court-fees [under S. 7, Cl. (*c*)], and that the same value must determine the value for the purpose of jurisdiction,[25] and the course of decisions on this point has been approved by the Privy Council in *Sunderbai* v. *The Collector of Belgaum*.[26] It has been recently held, in *Ishwarappa* v. *Dhanji Bhanji*,[27] that under S. 7, Cl. (iv) (*f*), Court-Fees Act, the valuation for the purposes of Court-fees in a suit for accounts lies in the discretion of the plaintiff.'' According to S. 8, Suits Valuation Act, VII of 1887, in a suit for accounts the value for the purposes of the Court-fees, and the value for the purposes of jurisdiction shall be the same. It would, therefore, follow that in suits for accounts the valuation for the purposes of Court-fees and for the purposes of jurisdiction shall be that which has been fixed by the plaintiff in the plaint.''[28]

87. Lahore.—The view taken in *Harichand* v. *Jiwanmal*,[29] was different from that in the Madras case in *Guruvajamma* v. *Venkata Krishnam*;[30] and following a Calcutta case, in *Boidya Nath* v. *Makhanlal*,[31] it was held that it is not permissible for a plaintiff to value the relief sought for purposes of Court-fee at an arbitrary value, inconsistent with his own valuation, in the plaint, of the property claimed. But, a Full Bench Ruling of the Punjab Chief Court, in *Barru* v. *Lachhman*,[32] has held, after noticing the conflict of decisions, that the valuation of the relief sought rested with the plaintiff, where the suit was one falling under S. 7, (iv) (*c*) of the Court-Fees Act, and the Court must

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(23) Per Scott, C.J., in 33 Bom. 307 (311).

(24) 33 Bom. 658 (664).

(25) *Balkrishna Narain* v. *Jankibai*, 44 Bom. 331 (335),—Per Shah, J.

(26) 1918 L.R. 46, I.A. 15=43 Bom. 507=1918 P.C. 188.

(27) 1932 Bom. 111=56 Bom. 23=137 I.C. 702=134 Bom. L.R. 44.

(28) 1932 Bom. 111=56 Bom. 23=137 I.C. 702.

(29) 28 P.R. 1903.

(30) 24 Mad. 34.

(31) 17 Cal. 80.

(32) 111 P.R. 1913=22 I.C. 503=228 P.W.R. 1913=23 P.L.R. 1914 (F.B.) (Dist. and Not foll. 17 Cal. 680 Diss; 11 C.W.N. 705; 14 C.L.J. 47=40 Cal. 245 Ref. and foll.; 2 All. 869; 4 All. 320 (F.B.); 15 All. 363; 20 Mad. 289; 23 Mad. 490; 24 Mad. 34; 27 Mad. 480; 2 Bom. 219; 17 Bom. 56; 29 Bom. 207=33 Bom. 307; 32 Cal. 734.

accept such valuation for the purposes of Court-fee. It was observed that the words of the concluding paragraph of S. 7 (iv) of the Act were perfectly clear and unambiguous, that apart from the well-recognized rule that in all fiscal enactments, words are to be construed'' precisely, ''and in a manner which ''bears least heavily on the subject,'' the doctrine could not be agreed to, that the interpretation of a section of an Act, when the words of the section are perfectly clear, is to be arrived at only after a consideration of ''the history'' of the law relating thereto and that the Court is not concerned with the results which may ensue from giving effect to the plain meaning of the words used by the Legislature. This authority lays down that as a general rule, the value as determinable for the purposes of Court-fees and the value for purposes of jurisdiction is the same, (S. 8 of the Suits Valuation Act), but this means that the amount at which the plaintiff in such suits values the relief sought by him for purposes of Court-fee, is to be taken, despite anything to the contrary in the plaint, as the value for purposes of jurisdiction. Accordingly, it has been held in later rulings, following the Full Bench, that in a suit under S. 7 (iv), of the Court-Fees Act, the Courts are bound to accept the valuation placed by the plaintiff upon the relief sought by him, even though such valuation is arbitrary, and inadequately represents the value of the property.[33] Similarly, in a suit falling under S. 7 (4) (*f*) where the defendant is appealing against a preliminary decree passed against him in the suit for accounts, he is entitled to put his own valuation on the memorandum of appeal, and pay the Court-fee on that valuation, and is not bound to accept the valuation given by the plaintiff in his plaint.[34] In *Buramal* v. *Tulsi Ram*,[35] the High Court held that where a suit falling within S. 7 (iv) (*c*) of the Court-Fees Act, has been erroneously valued for purposes of jurisdiction at the actual value of the property which was the subject-matter of dispute under the impression that the suit falls under Art. 17, Sch. II of the Court-Fees Act, the plaintiff may be allowed to amend the plaint and value properly the relief which he seeks for purposes of Court-fee, and the jurisdictional value will be the same as the value for purposes of Court-fee.

88. Madras.—In *Parathayi* v. *Sankumani*, the Madras High Court, held in a suit for cancellation of an agreement to sell, that the plaintiff was bound to pay Court-fees upon the value

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(33) *Nandan Mal* v. *Salig Ram*, 1922 Lah. 236=66 I.C. 34 (36); *Dwarka Das* v. *Krishan Kishore*, 2 Lah. 114=3 L.L.J. 349; also see *Rikhi Kesh* v. *Mela Ram*, 94 I.C. 650=1926 Lah. 242 (*Held*, that in a suit for rendition of accounts, the option or discretion of the plaintiff in fixing his valuation is not confined to those cases where the value of the relief cannot be ascertained at the time, the plaint is presented) and ''the plaintiff is entitled to exercise the privilege of valuing his relief at any figure he chooses''.

(34) *Thakardas* v. *Daulat Ram*, 91 I.C. 32=1926 Lah. 189; following 44 All. 542=66 I.C. 841=1922 All. 228.

(35) 107 I.C. 609=9 Lah. 366=1927 Lah. 890.

of his interest in the document sought to be invalidated.[36] In *Velu Goundan* v. *Kumaravelu*,[37] where the plaintiff had brought a suit for partition of family property, falling under S. 7 (iv) (*b*), it was held that the suit should be valued for purposes of Court-fees at the relief sought in the plaint, *viz.*, at the value of the share claimed, and the valuation for purposes of jurisdiction should follow and be the same as that for Court-fees. Similarly, it was held in *Samiya Mavali* v. *Minnamal*,[38] that where S. 7, Cl. (4) (*c*), applied, the valuation given by the plaintiff was the valuation to be accepted: and, that in the absence of rules framed applicable to the cancellation and delivery of an instrument in writing, the value given by the plaintiff, in the plaint, could not be revised.[39] In *Chinnamal* v. *Madarsa Rowther*,[40] the High Court was clearly of opinion that in cases falling under S. 7, Paragraph (iv), the law "expressly provides (and only in that class of suits) that the plaintiff should state in the plaint itself, under the sanction of verification, the amount at which he values the relief sought, and the Court has no jurisdiction to decline to accept the same, or to revise it, a power which is limited to cases provided for by S. 9." The Court-fee payable in suits (for partition) where the plaint is one to which S. 7 (4) applies is on the value of the relief sought, which the plaintiff has the right to value in his own way.[41] In suits for declaration and consequential relief, plaintiffs are likewise entitled to value consequential relief in any way they chose, subject to the recent proviso that in the case of immoveable properties the value should be at least half the value as arrived at by applying the rules of the clause.[42] In *Suryanarayana* v. *Raja of Vizianagram*,[43] where the suit was one substantially a suit for accounts, falling under S. 7 (4) (*f*), the Court held that the fee payable is to be computed according to the amount at which the relief sought is valued in the plaint, and although the plaintiff had valued the suit for purposes of jurisdiction at a different figure, this valuation for jurisdiction was immaterial. It was observed that "the authorities show that in a suit governed by S. 7 (4) (*f*) a plaintiff is entitled to pay Court-fee on the value he has thought fit to give to the relief

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(36) 15 Mad. 294.

(37) 20 Mad. 289.

(38) 23 Mad. 490=10 M.L.J. 240.

(39) See *Guruvajamma* v. *Venkatakrishna*, 24 Mad. 34 (Court has no power to increase the value put by the plaintiff).

(40) 27 Mad. 480 (Court could not revise the valuation put by plaintiff or decline to accept the plaint); also see *Chelasami Ramiah* v. *Chelasami Ramsami*, 18 I.C. 363=24 M.L.J. 233=13 M.L.T. 128; 1915 M.W.N. 105 (F.B.), holding that the valuation given by the plaintiff in cases coming under Cl. (4) is conclusive. This question was not reopened in *Arunachellam Chetty* v. *Rangasamy Pillai*, 28 I.C.79 =38 Mad. 922 (F.B.).

(41) *Sundara Ganapathi* v. *Daivasigamani*, 1931 Mad. 94 (96)= 129 I.C. 824=1930 M.W.N. 358.

(42) *Achattil Balakrishna* v. *Vishna Nambudiri*, 1931 Mad. 375= 132 I.C. 129=1930 M.W.N. 509.

(43) 1932 Mad. 565=137 I.C. 871=35 M.L.W. 358.

sought, notwithstanding that he has through mistake or inadvertence stated the value for the purposes of jurisdiction at a different figure.''[44] Similarly, in suits for taking accounts in partnership and partition suits, it has been held that the appellant, whether defendant or plaintiff, is in the position of a plaintiff, and he can file the appeal on any valuation he likes and pay Court-fee on it and the whole case can be heard on such payment.[45]

89. **OTHER COURTS**.—The JUDICIAL COMMISSIONER OF N.-W. F. PROVINCES, has held in No. 125, Judicial Record, that the Court-Fees Act should be read strictly, and that there is no reason to depart from the invariable practice of this Province which allows a plaintiff to put his own valuation on suits, and debars the Courts from interfering with that valuation.[46] The Rangoon High Court has held in *Sit Sole* v. *Ma Thin*, that in cases falling within S. 7 (4) (*c*), the plaintiff must value in his plaint the relief sought, and the plaint must be stamped according to such valuation, and not according to the subject-matter of the suit.[47]

90. **POWER OF COURT TO REVISE VALUATION—Calcutta**.—The course of decisions in the High Court of Calcutta has not been uniform, but on the whole, the view taken in *Birdya Nath* v. *Makhanlal*[48] has prevailed that the Legislature never intended to leave it to the plaintiff to choose the Court in which he should bring his suit by assigning an arbitrary valuation to the subject-matter of the suit.[49] The provisions of the Suits Valuation Act, VII of 1887, Ss. 7, 8 and 11, were considered to ''clearly indicate that that is not the intention of the Legislature.'' It was argued in *Hari Shanker* v. *Kali Kumar*,[50] that this construction would nullify the provisions of S. 7 of the Court-Fees Act, and the Court took a view, in that case, in agreement with the Courts of Bombay, Madras and Allahabad,[1] and it was held ''that in a case of this nature, it is not the duty, nor is it within the powers of the Court to ascertain the value of the property for the purposes of jurisdiction;

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(44) *Sailendra Nath* v. *Ram Chandra*, 66 I.C. 268=1921 Cal. 84; *Bai Hiragavri* v. *Gulabdas*, 22 I.C. 71; In re *Kalipad Mukerjee*, 1930 Cal. 686=131 I.C. 587=58 Cal. 281 (cited in 1932 Mad. 565=137 I.C. 871, *supra*).

(45) *Nukala Venkatanandam*, In re, 1933 Mad. 330=37 M.L.W. 106=64 M.L.J. 122=141 I.C. 602.

(46) Followed 111 P.R. 1913; 4 All. 320; 52 I.C. 897; distinguished from 24 I.C. 697; dissented from 10 I.C. 865; 17 I.C. 162; 68 I.C. 316.

(47) 84 I.C. 201=1924 Rang. 378 (2).

(48) 17 Cal. 680.

(49) 6 C.L.J. 427=11 C.W.N. 705; 17 I.C. 162=40 Cal. 245; 21 I.C. 404=40 Cal. 615; 21 I.C. 771; 86 I.C. 853=1925 Cal. 814 (815).

(50) 32 Cal. 734.

(1) *Sardarsingh* v. *Ganpatsingh*, 17 Bom. 56; *Bai Verunda* v. *Manegadri*, 18 Bom. 207; *Velu Goundan* v. *Kumarevelu*, 20 Mad. 289; *Ostoche* v. *Haridas*, 2 All. 869; *Jugal Kishore* v. *Tale Singh*, 4 All. 320; *Sheodeo Ram* v. *Tulsi Ram*, 15 All. 378.

but that it should accept the value of the relief stated in the plaint, both for the purposes of the Court-fee as well as for the purpose of determining the jurisdiction of the Court to try the suit.[2] However, in the case of *Umatul Batul* v. *Nanji Kuar*,[3] the ruling in *Boidyanath* v. *Makhanlal*,[4] was again followed, and the same view was taken in *Rajkrishna* v. *Bepin Behari*,[5] that the Legislature never intended to give the plaintiff liberty to assign an arbitrary value, and be free to choose his own forum. Reliance is placed in the leading case of *Umatul Batul* v. *Nanji Kuar*, on the powers of Court under Civil Procedure Code, to see that when Courts detect a plaintiff or appellant avoiding the payment of a proper fee by taking shelter under this paragraph that gives them the power to fix their own value for their claim, they feel it their duty to prevent such an evasion. Their Lordships observe "that the Court will be *slow to question* the propriety of the valuation put by the plaintiffs on the relief sought, but we do not think it can be affirmed as an inflexible rule of law that it is not open to the Court to revise the valuation put by the plaintiff when it is conclusively established that it is arbitrary and improper." In *Harihar* v. *Shyamlal*,[6] the Court held that plaintiff cannot value his case for the purpose of Court-fee and for the purpose of jurisdiction at different amounts, and further, that "it is the duty of the Court to see that proper value is put on the reliefs claimed," and, therefore, "the Court can question the value put on the reliefs claimed where it is shown on the face of the plaint that the value put on the reliefs is too small." This view was not challenged in *Mohendra Sundar* v. *Dinobandhu*,[7] the Court finding that there was no reason to apprehend that the relief sought had been arbitrarily valued. But in *Rupchand* v. *Kohirodamayi*,[8] the Court recorded an opinion contrary to the view laid down by previous authority, and held that "the valuation of the relief sought in cases coming under S. 7, Cl. (iv), rests with the plaintiff, and not with the Court."[8] But it did not adhere to this view, in *Falkner* v. *Mahomed Syed Ali*,[9] holding once again that "though S. 7, Cl. (iv) of the Court-Fees Act leaves it absolutely to the discretion of the plaintiff to value his reliefs under S. 7 (4), the Court is competent to exercise its powers conferred on it by the Civil Procedure Code, (O. 7, R. 11, Civil Procedure Code), and "to revise the valuation put by the plaintiff," adding that, "if on such revision, it is of opinion that the valuation is sufficient or arbitrarily low, it has jurisdiction to fix the proper value."

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(2) *Hari Shanker* v. *Kali Kumar*.
(3) 6 C.L.J. 427=11 C.W.N. 705.
(4) 17 Cal. 680.
(5) 17 I.C. 162=40 Cal. 245=16 C.L.J. 194=17 C.W.N. 591.
(6) 21 I.C. 404=40 Cal. 615.
(7) 21 I.C. 771.
(8) 50 Cal. 604=75 I.C. 474=1923 Cal. 311.
(9) 29 C.W.N. 627=86 I.C. 853=1925 Cal. 814 (815).

91. Patna.—The Patna High Court has held, in *Shama Pershad* v. *Shedparsan Singh*,[10] that where a consequential relief is sought in addition to a declaratory decree, the plaintiff is bound to fix upon the consequential relief a reasonable value. This has been relied upon in *Ramcharitar* v. *Basgit Rai*.[11] The rule was based upon S. 54 of the Old Code of Civil Procedure, now O. 7, R. 11 (*b*), Civil Procedure Code, 1908. The value for jurisdiction would determine Court, instead of following the value of Court-fee as held by Lahore, etc., High Courts.[12] In *Brij Krishnadas* v. *Murliram*,[13] the view is again expressed that "for the purpose of Court-fee the valuation put by the plaintiff in a suit under S. 7 (4) (*c*) is not to be an arbitrary valuation. It is to be in accord with the value of the subject-matter, and in case of dispute is to be determined by the Court."[13] In *Sitaramsingh* v. *Kespo Prasad*,[14] the Patna High Court has followed *Umatul Batul* v. *Nanji Kair*,[15] in preference to the Full Bench decisions in the case of *Arunachellam Chetty* v. *Rangasawmy Pillai*,[16] which relying upon a Full Bench decision in the case of *Chelsani Ramiah* v. *Chelsami Ramsami*,[17] held that the valuation given by the plaintiff in cases coming under Cl. (4) is conclusive, and that it could not be raised or re-opened. The Patna Court holds with the Calcutta Court, "that although it is for the plaintiff to state the amount at which he values the relief sought, and although the amount of Court-fee payable varies with the amount at which the relief sought is valued in the plaint, it is open to the Court, if a question is raised as to the true valuation of the suit, to determine such question." In a case under S. 7 (iv) (*f*) of the Court-Fees Act, the Patna High Court[18] had to consider the question of Court-fee in appeal, where the liability which had been found to exist by the trial Court was denied in toto, or where liability is denied for a portion of the claim, which portion had been clearly and definitely valued in the plaint, and it came to the conclusion "that it is not open to a defendant appealing from the decree to value his appeal otherwise than at the value which the plaintiff, as required by the provisions of S. 7 (iv) (*f*), Court-Fees Act, has placed upon his relief", following the decision of the Full Bench of the Madras High Court in *Dhupati Srinivasacharlu* v. *Perindevamma*.[19]

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(10) 41 I.C. 95 (referring to *Birdyanath* v. *Makhanlal*, 17 Cal. 680; and *Umatul Batul* v. *Nanji Koer*, 6 C.L.J. 427; 11 C.W.N. 705.

(11) 1932 Pat. 9=11 Pat. 161=133 I.C. 687.

(12) 41 I.C. 95 (96)=2 P.L.W. 173=5 P.L.J. 394.

(13) 56 I.C. 316 (318)=4 P.L.J. 703.

(14) 1931 Pat. 195=131 I.C. 808=12 P.L.T. 550.

(15) (1907) 11 C.W.N. 705=6 C.L.J. 427.

(16) (1915) 38 Mad. 922=28 I.C. 79 (F.B.).

(17) (1913) 18 I.C. 363 (F.B.).

(18) *Butto Krishna Ray* v. *Barkar Coal Co.*, 1931 Pat. 335=10 Pat. 458=133 I.C. 365.

(19) 39 Mad. 725=33 I.C. 602 (F.B.); cf. *Kanhaiyalal* v. *Seth Ram Sarup*, 66 I.C. 841=1922 All. 228=44 All. 542, (Wherein the defendant,

92. The view taken in Patna case, *Brij Krishnadas* v. *Murli Rai*[20] has been followed by NAGPUR JUDICIAL COMMISSIONER'S COURT in *Kalicharnlal* v. *Shivshankar*.[21] This ruling notices the conflict between Calcutta, Patna, and Nagpur cases on one side, and Bombay and Madras cases on the other,[22] and decides to follow its own earlier ruling in *Devi Das* v. *Ramlal*.[23] The rulings of Allahabad High Court, and the Lahore High Court, especially the Full Bench Ruling, in *Barru* v. *Lachhman* do not seem to have been brought to the notice of the Court. The Nagpur Court follows the Calcutta view in *Umatul Batul* v. *Nanji Koer*[24] and in *Raj Krishna Dey* v. *Bepin Beharey Dey*[25] and in *Pandharinath* v. *Maroti Ganesh*,[26] it has held, that in a suit for declaration involving a consequential relief as to setting aside of a decree, the Court-fee must be *ad valorem* on the amount of the decree which was sought to be declared void. But, in a suit for partnership accounts, falling under S. 7 (iv) (*f*), it has been held that appellant can fix his own value provisionally for the purposes of Court-fee.[27]

93. **THE RANGOON HIGH COURT**, in *Sit Soe* v. *Ma Thin*,[28] relied upon the Madras case of *Chinnamal* v. *Madarsa Rowther*,[29] and the Lower Burma case in *Maung Kyin* v. *Po Then*[30] was not followed. A Full Bench of Rangoon High Court [31] has held that the intention of the Legislature in enacting S. 4 was that in cases where it is impossible *a priori* to ascertain with accuracy the value of the relief that is sought, the plaintiff in the trial Court, and the appellant in the Court of appeal should be the persons designata to make an estimate of the value of the relief that is claimed''. But in *Maung Nae* v. *Maung Uba*, (1933 Rangoon 40) it has dissented from the Madras High Court Ruling in *Chinnamal* v. *Madarsa Rowther*,[32] and following *Dayaram Jagaran* v. *Gordhandas*,[33] and *Raj Krishna* v. *Bipin*

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who had been held liable to render accounts, was allowed to put his own value in appeal).

(20) 56 I.C. 316 (318)=4 P.L.J. 703.

(21) 79 I.C. 113=1924 Nag. 295.

(22) 6 C.L.J. 427=11 C.W.N. 705; 17 I.C. 162=40 Cal. 245; 17 Cal. 680; 24 I.C. 679=36 All. 500; 56 I.C. 316=4 P.L.J. 703; 41 I.C. 95=5 P.L.J. 394=2 P.L.J. 173; 10 I.C. 865=14 C.L.J. 47 =15 C.W.N. 823; 68 I.C. 316=2 Pat. 198.

(23) 13 I.C. 864=7 N.L.R. 190.

(24) 11 C.W.N. 705=6 C.L.J. 427.

(25) 17 I.C. 162=40 Cal. 245, followed in *Bari Babu* v. *Kundan Singh*, 71 I.C. 31=1922 Nag. 264.

(26) 1933 Nag. 214.

(27) *Binjraj* v. *Kishanlal*, 1933 Nag. 127.

(28) 84 I.C. 201=1924 Rang. 378 (2)=3 Bur. L.J. 128.

(29) 27 Mad. 480.

(30) 2 L.B.R. 266.

(31) *C. K. Umar* v. *C. K. Ali Umar*, 1931 Rang. 146 (F.B.).

(32) 27 Mad. 480.

(33) (1907) 31 Bom. 73.

Behari[34] holds "that although the value put by the plaintiff on his suit *prima facie* determines the jurisdiction on the plaint it does not follow that the plaintiff is at liberty to place an arbitrary value to the suit".

94. THE OUDH CHIEF COURT.—The Oudh Chief Court has taken the view that in a case of gross over-valuation by plaintiff, the Court has the power to interfere under S. 151, Civil Procedure Code, in the absence of a direct authority for the Court under one of the sub-Cls. of S. 7 (iv).[35] The cases cited from Calcutta, Bombay, and Allahabad were all cases in which the plaintiff had sought to pay a lower Court-fee by an undervaluation of same part of the claim, and no case of arbitrary over-valuation was referred to.[36] The Court observed that the plaintiff had paid the maximum, and no question of Court-fee arose in consequence.

95. THE SINDH COURT has held, in a case falling under S. 7 (4) (*c*), where plaintiff was seeking injunction to restrain defendants from enforcing money decree passed against him, that he must value injunction according to amount of decree which he seeks to get vacated.[37] The Court refers to the ruling of Calcutta High Court in *Umatul Batul* v. *Nanji Koer*,[38] where Mukerji, J., points out that the provisions of the section are controlled by the provisions of O. 7, R. 1 (2) and R. 11, Cl. (*b*). Civil Procedure Code corresponding to Ss. 50 and 54 of the Code of 1882, and that the repealing and Amending Act XII of 1891 which repealed from S. 7, Cl. (iv), Court-Fees Act, the words "and the provisions of the Civil Procedure Code, 1859, S. 31 shall apply as if for the word 'claim', the words 'relief sought' were substituted", did not intend to effect any change in the law then in force. In *Shivandas Motumal* v. *Hariram*,[39] the Sindh Court has held recently that in a suit for settlement of partnership accounts where plaintiff has put his own value, and decree is against plaintiff for payment of money, and he appeals from such decree, he should pay Court-fee on amount decreed as also amount for which he has valued suit. The test for determining proper Court-fee payable on appeal being the value of the relief granted which is sought to be got rid of.[40] The Court noticed that the plaintiff was practically seeking two reliefs. In the first place, he wanted to get rid of the decree which had been passed against him, and in the second

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(34) 17 I.C. 162=40 Cal. 245.

(35) *Rajendra Baksh Singh* v. *Babu Ram*, 107 I.C. 330=1928 Oudh 260; *cf.* 8 Bom. 31.

(36) Cf. *Hari Shankar* v. *Kumar*, 32 Cal. 734=9 C.W.N. 680; *Raj Krishna* v. *Bepin Behari*, 17 I.C. 162=40 Cal. 245; *Sunder Bai* v. *Collector of Belgaum*, 52 I.C. 897=43 Bom. 376=46 I.A. 15 (P.C.); *Thakar Sheodut Singh* v. *Bishun*, 24 I.C. 679=36 All. 500=12 A.L.J. 844.

(37) *Nadir Khan Abdulla* v. *Cox and King's Co.*, 1931 Sind 15=130 I.C. 445=25 S.L.R. 15.

(38) (1907) 6 C.L.J. 427=11 C.W.N. 705.

(39) 1933 Sindh 332.

(40) *Muthamal* v. *Bashamal*, 116 I.C. 110=1929 Sind 161.

place he wanted a decree for an additional amount to be passed in his favour; and he had to pay Court-fee *ad valorem* on the amount decreed against him, and could put his valuation at a nominal figure on the additional amount, which he claims.[41] "Although the valuation placed by the plaintiff is not expected to be exact it must be a reasonable valuation and not merely arbitrary or fanciful".[42]

96. VALUATION IN APPEAL.—In *Faizullah Khan* v. *Mouladad Khan*,[43] Their Lordships of the Privy Council held that the memorandum of appeal should state in terms of the Act, the amount at which the relief is sought. This determines the appeal. In a SUIT FOR PARTNERSHIP ACCOUNTS, falling under S. 7 (xi) (*f*), the tentative value had been fixed by the plaintiff at Rs. 3,000. The trial Court by its final decree declared that Rs. 19,000 were due to the defendants by the plaintiffs. No sum was found due to the plaintiffs under the claim for Rs. 3,000. The plaintiffs appealed against the decree, praying for a reversal of the decree against them, and for granting a decree in their favour for such amount as may be found due. They valued the appeal, for purposes of Court-fees at Rs. 19,000, and paid Court-fee due thereon. It was held that the memorandum of appeal complied with the requirements of the Court-Fees Act, in stating the AMOUNT AT WHICH THE RELIEF SOUGHT WAS VALUED, and that this payment could not be treated as either an under-value; or a split value, and "that it was a mistake to treat the payment of Court-fee on Rs. 19,000 only as a fee made only on the amount of the decree passed against the appellants". Their Lordships' reasoning, based on the general nature of suits for account, was to the effect that "that amount may be not only in full but largely in excess of the true sum of relief at which a sound valuation could in the circumstances be said to reach, and *it covered the appeal as a whole*, including that sum on the one hand, and a much smaller figure of Rs. 3,000 on the other": that in such a case, the Court could exercise the judicial authority of the discretion for giving an opportunity to add to the amount lodged the extra Court-fee required, or for deferring the question of the amount of fee under the Court-Fees Act until final value was ascertained". Stress was laid on the provisions of S. 149, Civil Procedure Code, which extends that discretion to the whole or any part of any fee described, and can be exercised at any stage in the case, with retrospective effect. Thus, on the facts, there was no question of an arbitrary or improper value having been put upon the claim in appeal, as remarked, in *Shiv Ram Motumal* v. *Hari Ram*.[44] THE SINDH COURT held, that where the plaintiff-appellant wanted

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(41) *Ibid.*, 116 I.C. 110=1929 Sind 161 (Refers to *Faizullah* v. *Mauladad*, 1927 P.C. 147=10 Lah. 737 (P.C.)=56 I.A. 232; and distinguishes 141 I.C. 602=1933 Mad. 330.

(42) *Dipchand Dowlat Ram* v. *Firm of Permanand Chimandas*, 79 I.C. 582=16 S.L.R. 273.

(43) 1929 P.C. 147=56 I.A. 232=117 I.C. 493=10 Lah. 737 (P.C.).

(44) 1933 Sindh 322.

to get rid of the decree which had been passed against him, and further he wanted a decree for an additional amount to be passed in his favour, he had to pay Court-fees on the amount decreed against him, and "so far as the additional amount which he claimed was concerned it was open to him to say that he is not able to ascertain that amount, and may put his valuation at a nominal figure". THE MADRAS HIGH COURT has held in re *Venkatanadum*,[45] following the Privy Council ruling in *Faizullah* v. *Mauladadkhan*," that the appellant whether plaintiff or defendent, can give same valuation and one cannot complain that the amount in the memorandum is not the proper amount, the reason being that in suits for accounts it is impossible to say at the outset what exact amount the plaintiff will recover, and they apply this principle to appeals also". This judgment was distinguished in the Sindh Court, on the ground "that the judgment does not show what was the amount decreed against the defendants.[46] The Privy Council ruling, in *Faizullah Khan* v. *Mauladad*, is quoted by Page, C. J. in *C. K. Umar* v. *C. K. Ali Umar*,[47] as authority for the proposition that where in a suit coming under Cl. (iv) (*f*) of S. 7 Court-Fees Act, the plaintiff having obtained a preliminary decree for accounts, the defendant appeals against the whole decree, the defendant is not bound by the valuation of the plaint of the trial Court, and is at liberty to make a fresh valuation for the purpose of the appeal. The same view was taken by THE ALLAHABAD HIGH COURT in *Chunnilal* v. *Shivcharnlal*,[48] where Sulaiman, J., observed that in a case falling under Sub-Cl. (iv) (*f*) of S. 7, the valuation made by the plaintiff is often an arbitrary, and a tentative one, "and that there is no just ground why the defendant when appealing should be tied down to this haphazard estimate when on the force of it, the valuation is merely tentative". THE PATNA HIGH COURT, has similarly held, in *Kuldip Sahay* v. *Harihar Prasad*,[49] that a defendant-appellant in a suit for accounts is free to put his own valuation on the memorandum of appeal, and is not bound by the valuation of the plaintiff in the plaint, particularly when the defendant does not dispute the liability to accounts, but he wants certain restrictions to be placed upon the right of the plaintiff to take accounts from him and it is difficult to assess the relief sought by him in appeal. But in the FULL BENCH RULING OF MADRAS HIGH COURT in *Srinivasa Charlu* v.

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(45) 141 I.C. 602=1933 Mad. 330.

(46) 116 I.C. 110=1920 Sindh 161; also see *Shiv Ram Motumal* v. *Hariram*, 1933 Sind 322; and cf. *Dipchand* v. *Dowlat Ram*, 79 I.C. 582=16 S.L.R. 273. *Held*, that "where there is no basis of cash valuation, the plaintiff can make an imaginary valuation, subject to his paying an additional Court-fee on what may be ultimately found due. It is possible that not only in the plaint, but also in the memorandum of appeal, the condition of the plaintiff's case might be such as it may be impossible for him to estimate what would come to him if his appeal were successful".

(47) 9 Rang. 165 (168)=133 I.C. 91=1931 Rang. 146 (F.B.).

(48) 89 I.C. 122=47 All. 756=1925 All. 787.

(49) 75 I.C. 871=4 P.L.T. 638.

Perindevamma[50] where defendant appealed, against a preliminary decree for account obtained by plaintiff, it was held that the defendant was bound by the valuation in plaint, and was not at liberty to make a fresh valuation for the purpose of his appeal. This ruling was based on an earlier Madras case, *Samiya Mavali* v. *Minammal*,[1] supported by the decision of Calcutta High Court in *Banwari Lal* v. *Sheo Shanker*.[2] These cases are distinguishable, and do not establish the proposition set forth in the Madras Full Bench ruling as observed by the Patna High Court in *Kuldip Sahay's* case.[3] The Madras Full Bench case has also been discussed by a Full Bench of the Rangoon High Court in *Umar* v. *Ali Umar*,[3a] and it was pointed out that the Madras view is not supported by the wording of S. 7 (iv) (*f*) Court-Fees Act, and is also in conflict with the decision of their Lordships of the Privy Council in *Faizullah Khan* v. *Mauladad Khan*,[3b] THE ALLAHABAD CASE, in *Kanhaiya Lal* v. *Ram Sarup*,[4] after considering the Madras decision, held that the defendant in an appeal against a preliminary decree in a suit for accounts is allowed to put his own valuation on appeal, and he is not bound by the valuation of the plaintiff in his plaint. This Allahabad ruling was cited in *Butto Krishna* v. *Baskar Coal Coy*,[5] before a single Judge of the Patna High Court, who refers to the observations by Sir Jwala Prasad in *Kuldip Sahai* v. *Harihar Prasad* in distinguishing the Allahabad and Madras decisions. And, it was held, that the VALUATION OF THE CLAIMS which formed the subject-matter of the appeal being DEFINITELY GIVEN IN THE PLAINTS AS OF A SUM ASCERTAINED, and not as a mere approximate calculation made for the purpose of applying S. 7 (iv) (*f*), Court-Fees Act, the valuation given in the plaints should be the valuation of appeal for purposes of Court-fee. The observation in *Shivandas* v. *Hari Ram*[6] is to the same effect: "Where a definite sum has been decreed against a plaintiff it is rather difficult for him to contend that it is open to him to value his relief at any figure which is less than the amount decreed against him". THE MADRAS HIGH COURT view, remains that where in a suit for accounts the defendant appeals from

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(50) 33 I.C. 602=39 Mad. 725=30 M.L.J. 402 (F.B.); folld. in *Batna Ram* v. *Rahmatullah*, 1931 Lah. 143.

(1) 23 Mad. 490=10 M.L.J. 340; also see *Damodara Padhano* v. *Halibhandu*, 70 I.C. 392=1921 Mad. 406.

(2) 1 I.C. 670=13 C.W.N. 815.

(3) 23 Mad. 490 (Suit for declaration of invalidity of a sale-deed for a certain amount); 1 I.C. 670=13 C.W.N. 815 (Suit for possession with mesne profits anterior to suit); Distinguished in 75 I.C. 871=4 P.L.T. 638; discussed in 1931 Rang. 146=133 I.C. 91=9 Rang. 165 (F.B.); not foll. in 1933 Lah. 633.

(3*a*) 9 Rang. 165 (F.B.).

(3*b*) 10 Lah. 737=1929 P.C. 147=117 I.C. 493 (P.C.).

(4) 66 I.C. 841=44 All. 542=1922 All. 228.

(5) 1931 Pat. 335=10 Pat. 458=133 I.C. 365.

(6) 1933 Sindh 322 (*Held*, that where a definite sum has been decreed against the defendant, he cannot plead that, in the first instance the plaintiff had valued the relief at a nominal figure).

the whole decree he is bound by the plaintiff's valuation in appeal: and it further holds that it is competent for a defendant in a suit for account to prefer a single combined appeal against the preliminary and final decrees if the dates permit him to do so.[7] The LAHORE HIGH COURT, follows the Allahabad view on this point. It was held in *Thakur Das* v. *Daulat Ram*,[8] that under S. 7 (iv) (*f*) of the Act, where the memorandum of appeal does not show the actual value, but the value is stated to be fixed, the appellant is entitled to put his own valuation on the appeal, and is not bound to accept the valuation given in the plaint. A recent ruling, in *Mt. Niamate Bai* v. *Dalat Ram*,[9] holds that the value of the relief sought where a decree is passed on the basis' of referees' report, would be the amount which plaintiff claims in excess of the amount decreed in his favour by the trial Court, and that plaintiff should be given a reasonable opportunity to value the relief sought in appeal and pay Court-fee thereon even though he had not expressed his readiness to make up the Court-fee in course of arguments. THE NAGPUR COURT, has held, in *Binjraj* v. *Kisanlal*, that it is open to the appellants in an appeal against preliminary decree in a suit for partnership accounts to fix their own value provisionally for the purpose of Court-fees.[10]

97. **JURISDICTION—VALUATION OF SUIT.**—The values for purposes of Court-fee, and jurisdiction have to be identical, in suits of the nature falling under Cl. (iv) of S. 7, under the provisions of S. 8 of the Suits Valuation Act. The Courts which favour the view that plaintiff has the option to value the suit arbitrarily, would interpret the provision to mean that the Court-fee value, as put by the plaintiff, determines the jurisdiction value of the suit also, which *follows* the Court-fee value.[11] The opposite view holds that if a value for jurisdiction is declared in the suit or plaint, the Court-fee cannot be reasonably paid at a lesser figure, and that the value for jurisdiction would indicate the value which plaintiff ought to have fairly, truly or reasonably put on the plaint, or on the memorandum of appeal.[12] THE ALLAHABAD HIGH COURT has held, in *Manni Lal* v. *Thakur Radhey Gopalji*[13] that in a suit falling under S. 7 (iv) (*c*), of the Court-Fees Act,

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(7) *Damodara Padhand* v. *Haribhandu*, 70 I.C. 392=1921 Mad. 406; *also see* and *cf*. In re *Nukala Venkatamandam*, 1933 Mad. 330. (Which follows the interpretation put by the Rangoon Full Bench case—1931 Rang. 146=9 Rang. 165=133 I.C. 91—on the Privy Council ruling.)

(8) 91 I.C. 132=1926 Lah. 189; cf. *Batna Ram* v. *Rahmatullah*, 1931 Lah. 143 (where the Madras Full Bench was followed); *also see* and *cf*. 7 P.R. 1915=28 I.C. 262.

(9) 1933 Lah. 633.

(10) 1933 Nag. 127=141 I.C. 277=16 N.L.J. 10.

(11) *Ishwarappa* v. *Dhanji Bhanji*, (1932) 137 I.C. 702=50 Bom. 23; *Manni Lal* v. *Thakur Radhey Gopalji*, 87 I.C. 170; *Hari Shanker* v. *Kali Kumar*, 32 Cal. 734; *Barru* v. *Lachhman*, 111 P.R. 1913 (F.B.).

(12) *Boidyanath* v. *Makhanlal*, 17 Cal. 180; also see *Umatul Batul* v. *Nanji Koer*, 6 C.L.J. 427=11 C.W.N. 705 (710); and cf. *Jageshwa* v. *Durga Prasad*, 24 I.C. 679 (682)=36 All. 500.

(13) 87 I.C. 190=47 All. 501=1925 All. 602.

the valuation for purposes of Court-fee is to be determined first, and that for the purposes of jurisdiction must follow on the same; but where the plaintiff sets a high value on the relief by way of declaration, and a merely nominal one on the relief by way of consequential relief, the "relief sought" must be the sum total of two reliefs. THE BOMBAY HIGH COURT, points out in *Iswarappa* v. *Dhanji Bhanji*[14] that under S. 7, Cl. (iv) (*f*), of the Court-Fees Act, the valuation for purposes of the Court-fees in a suit for account lies in the discretion of the plaintiff: and according to S. 8 of the Suits Valuation Act, VII of 1887, in a suit for accounts the value for the purposes of the Court-fees and the value for the purposes of jurisdiction shall be the same. It follows that in suits for accounts the valuation both for purposes of Court-fees and jurisdiction shall be that which has been fixed by the plaintiff in the plaint THE CALCUTTA HIGH COURT, held in *Harishanker* v. *Kalikumar*,[15] that the value for purposes of jurisdiction shall follow the value for purpose of Court-fee. But the opposite view has been taken in *Boidyanath* v. *Makhanlal*[16] and in *Umatal Batul* v. *Nanji Kuar*[17] also in *Rajkrishna* v. *Bipin Behari*[18] and in *Assignee, High Court* v. *Mirza Mahammad Syed Ali*,[19] wherein it has been held that although S. 7 (iv) of the Court-Fees Act leaves it absolutely to the discretion of the plaintiff to value his relief under Sub-Cls. (*c*) and (*d*) of the clause, the Court is empowered under the law to revise the valuation put by the plaintiff, and if on such revision it is of opinion that the value is insufficient, or arbitrarily low, it has jurisdiction to put the proper value. THE PATNA HIGH COURT follows the Calcutta High Court in holding that if a plaintiff puts upon the consequential relief a ridiculous value, then the Court must step in and fix a reasonable value for him, and this jurisdictional value will determine the Court-fee payable also.[20] THE LAHORE HIGH COURT, follows the Full Bench ruling of the Punjab Chief Court, in *Barru* v. *Lachhman*,[21] where on an interpretation of S. 8 of the Suits Valuation Act read with S. 7 (iv) of the Court-Fees Act, it was held that the plaintiff is competent to value the relief sought by him for the purposes of the Court-Fees Act at any amount he arbitrarily chooses, and that for the purposes of jurisdiction the value of the suit shall be the same. The Calcutta view is dissented from, and the Allahabad and Madras view is adopted on a consideration of the conflict of

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(14) 137 I.C. 702=56 Bom. 23; also see *Dayaram* v. *Gordhandas*, and *cf.* 31 Bom. 73 (78); *Held*, that it is open to plaintiff to put his own valuation on the claim under S. 7 (4) (*c*), and under S. 8, suits valuation the same value must determine the value for purposes of jurisdiction. The course of decision was approved by the Privy Council in *Sunder Bai* v. *The Collector of Belgaum*, 1918 L.R. 46 I.A. 15.

(15) 32 Cal. 734.

(16) 17 Cal. 680.

(17) 6 C.L.J. 427=11 C.W.N. 705 (710).

(18) 17 I.C. 162=40 Cal. 245 (249).

(19) 86 I.C. 853=1925 Cal. 814.

(20) 41 I.C. 95 (Pat.).

(21) 111 P.R. 1913=32 I.C. 503 (F.B.).

authority. THE MADRAS HIGH COURT, held in *Samiya Mavali* v. *Minnamal*,[22] that in a suit for cancellation for document, falling under S. 7 (iv) (*c*), the valuation given by the plaintiff has to be accepted. Again, in a suit for partition, and to get over effect of partition deed, where S. 7, (iv) (*b*), or 7 (iv) (*c*), applied, plaintiff was given opportunity to value his relief in his own way,[23] and in suits for taking accounts in partnership and partition suits, plaintiffs or appellants can institute a suit, or file an appeal, on any valuation they like.[24] THE NAGPUR JUDICIAL COMMISSIONER'S COURT, has held, in *Pandharinath Krishna* v. *Maroti Ganesh*[25] that in a suit falling under S. 7 (iv) (*c*), to set aside a decree, as a consequential relief, *ad valorem* Court-fees will be calculated on the amount of the decree in favour of the defendant, which is sought to be declared void. And, THE SINDH JUDICIAL COMMISSIONER'S COURT,[26] holds, that where the plaintiff seeks an injunction restraining the defendant from enforcing a money decree passed against him personally in favour of the defendants, the value cannot be placed arbitrarily on the benefit which he expects to derive from the injunction sought, but must value the injunction according to the amount of the decree which he seeks to get vacated. This is in accordance with the view in *Umatul Batul* v. *Nanji Kuer*.[27]

(3) As regards SUITS FOR ACCOUNTS, it is to be noted, that according to authorities, the value for purposes of Court-fee and jurisdiction shall be that which has been paid by the plaintiff in the plaint.[28] It is, therefore, the plaintiff's valuation in the plaint which fixes the jurisdiction of the Court, and not the amount which may be fixed and decreed by the Court.[29] It was held in *Ambadas* v. *Vishnu*,[30] that the mere fact that the decree is for an amount exceeding the pecuniary limit of the jurisdiction of the Court passing it, is not sufficient to establish that it was beyond its jurisdiction and a nullity. "The Jurisdiction of a Court is determined under the Bombay Civil Courts Act by the valuation in the plaint, and not by the result of the decree whatever it might turn out to be".[31] In *Krishnaji* v. *Motilal*,[32] it was held following

(22) 23 Mad. 490 (491).

(23) *Sundara Ganapathi* v. *Daivasikami*.

(24) *Nukula Venkatanandum*, 1933 Mad. 330=1241 I.C. 102=64 M.L.J. 122=37 M.L.W. 106.

(25) 1933 Nag. 214.

(26) *Nadir Khan Abdulla Khan* v. *Cox and King's Co.*, 1931 Sind 15 =130 I.C. 445=25 S.L.R. 15.

(27) 6 C.L.J. 427=11 C.W.N. 705.

(28) *Ishwarappa* v. *Dhanji Bhanji*, 137 I.C. 702 (703)=56 Bom. 23.

(29) *Lakshman Bhathar v. Babaji*, 8 Bom. 31; *Mahabir Singh* v. *Beharilal*, 13 All. 320=(1891) A.W.N. 107; *Madhodas* v. *Ramji Patak*, 16 All. 286; 1894 A.W.N. 84; also see and cf. *Sailendra Kumar* v. *Haricharan*, 1931 Cal. 159; (Mortgage suit for sale, containing prayer for interest *pendente lite* and costs, valued at amount of plaint, not the sum decreed).

(30) 50 Bom. 839=100 I.C. 109=1927 Bom. 83.

(31) 137 I.C. 702 (703)=56 Bom. 23, *supra*.

(32) 122 I.C. 66=1929 Bom. 337=31 Bom. L.R. 476.

the decisions in *Shamrav Pandoji* v. *Neloji*[33] and *Ramachandra Baba* v. *Janardhan Apaji*[34] that the jurisdiction of the trial Court depended on the valuation of the claim as made in the plaint, and that especially in a suit for accounts, the jurisdiction to pass a decree for more than the pecuniary limits of jurisdiction was not excluded when it was found on taking the accounts that a sum in excess of the pecuniary jurisdiction was due. In *Shamarao Pandhoji* v. *Niloji Ramaji*,[35] it was held that the subject-matter of the suit was within the jurisdiction of the trial Court, and its jurisdiction would continue, whatever may be the result of the suit. In *Ramchandra* v. *Janardhan*,[36] it was similarly held by Sir Charles Sargent, that what determined the value of subject-matter in suit was not the amount decreed. S. 11 of the Court-Fees Act prescribes the procedure in suits for accounts when the amount decreed exceeds the amount claimed. The Full Bench ruling of the Calcutta High Court in *Bidzadhur* v. *Manindranath*[37] would seem to overrule the Calcutta case in *Golapsingh* v. *Indra Coomar*,[38] and this decision was also dissented from in *Sudarsan Shastri* v. *Ram Prasad*,[39] by the Allahabad High Court. The view taken by the Full Bench in Calcutta, is consistent with that taken by the Madras High Court, in *Arogya Udayan* v. *Appactu Rowthan*;[40] and *Kannaya Chetti* v. *Venkata Narasayya*.[41] The proposition of law deducible is that the jurisdiction of the trial Court is not ousted after it has made a preliminary decree for accounts by the fact that on taking accounts a sum more than the pecuniary jurisdiction of the Court has been found to be due.

(3) It was pointed out in the Full Bench Ruling, of Punjab,[42] that where the suit was valued at an amount permissible under the rules for purposes of jurisdiction, it was open to him to fix an arbitrary value upon the relief sought for the purposes of Court-Fee: and "that S. 8 has no operation when the suit is of a class for which provision is expressly made by rules under S. 9 of the Act. S. 8 of the Suits Valuation Act has nothing to do with the fixing of values for purposes of Court-Fees, but merely provides, that, as a *general rule*, the jurisdictional value of suits falling within its purview, shall be the same as the value put on the suit for purposes of Court-fee" "It is a general rule, and has no applicability to the special class of suits for which express provision is made by Ss. 4 and 9 of the Act."[43] In *Achattil*

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(33) 10 Bom. 200.
(34) 14 Bom. 19.
(35) 10 Bom. 200.
(36) 14 Bom. 19.
(37) 53 Cal. 14=89 I.C. 726=1925 Cal. 1076 (F.B.).
(38) 1 I.C. 86=13 C.W.N. 493=9 C.L.J. 387.
(39) 33 All. 97=7 I.C. 385=7 A.L.J. 863.
(40) 25 Mad. 543=12 M.L.J. 35.
(41) 40 Mad. 1=39 I.C. 439=32 M.L.J. 221; also see *Ishwarappa* v. *Dhanji Shanji*, 137 I.C. 702=56 Bom. 23.
(42) *Barru* v. *Lachhman*, 111 P.R. 1913 (F.B.).
(43) *Ibid.*, 111 P.R. 1913 (at p. 419).

Balakrishna v. *Vishnu Nambudri*,[44] the Madras High Court holds that under S. 4 of the Suits Valuation Act, the value for purposes of jurisdiction cannot exceed the value as arrived at by applying the rules under the Court-Fees Act.

S. 7 (4) (*a*) :—Moveable property having no market-value-

Synopsis.

98. Scope and applicability.
102. Valuation for Court-fee.
103. Madras Amendment of 1922.
104. Valuation for jurisdiction.

Comments.

98. SCOPE AND APPLICABILITY.—This paragraph details with suits for recovery of moveable property having no market-value, as, for instance in the case of *documents relating to title*. Paragraph (iii) *ante*, deals with similar suits, for moveable property other than money, where the subject-matter has a market-value.[45] As to the definition of moveable property which includes a document, see comments under paragraph (iii).[46]

99. It was pointed out in a Calcutta case[47] where a suit was brought on behalf of a minor, to recover from the defendant, the title-deeds of certain house, and garden property, and also some articles of jewellery, as heir to his deceased father, and the defendant contended that the conveyances merely represented a *benami* transaction, and thus raised a question of title to properties outside the jurisdiction of High Court, "A SUIT TO RECOVER TITLE-DEEDS although it MAY INVOLVE A QUESTION OF TITLE, is not a suit to obtain possession of land, or to deal in any way with the land itself, within the meaning of the charter."

100. A Suit for the Delivery of Bonds and for an injunction to restrain the defendants from suing on them, or drawing out money from the bank falls under this clause as regards the delivery of bonds concerned, inasmuch as they HAVE NO MARKET-VALUE.[48] In *Chetsingh* v. *Mulsingh*,[49] the Punjab Chief Court, observed that "bonds have a value in themselves as forming additional security for rights," and they should be held to be property. The Court further held that the value to be stated in the plaint "could be nothing less than the amounts for which they were held as securities". This latter observation is hardly correct as the ostensible figure for which a bond stands cannot always represent its intrinsic value to the holder, apart from numerous considerations attending the transaction. A SUIT BY A MORTGAGOR TO OBTAIN POSSESSION OF THE MORTGAGE-DEED, on the ground that the amount of the deeds had not been paid, which did not involve the issue whether plaintiff was entitled to recover the document, but only a question of fact, whether the amount had

(44) 1931 Mad. 375=132 I.C. 129=1930 M.W.N. 509.
(45) *See* Comments, Para. 69, *ante*.
(46) *Ibid.*, Paras. 70, 71, *ante*.
(47) *Juggernath Doss* v. *Brijnath Doss*, 4 Cal. 322=3 C.L.R. 375.
(48) Bombay Printed Judgments, (1894), p. 145.
(49) 10 P.R. 1871.

been repaid, is NOT A SUIT FOR RECOVERY OF TITLE-DEED, and cannot fall under this clause.[50]

101. A suit for declaration of invalidity of a document, *e.g.*, for cancellation of an agreement to sell,[1] or for cancellation of a decree,[2] is not a suit falling under this clause. In the former case, plaintiff would be required to pay duty upon the value of his interest in the document, the invalidity of which he sought to have declared: and, in the latter case, the subject-matter of that decree so sought to be set aside is the whole of immoveable property in that suit. Where defendant refused to carry out an agreement of sale, and the plaintiff sued (1) for return of the original deed, or in the alternative, (2) for execution of a fresh deed, and (3) registration of the deeds mentioned in (1) and (2), it was held that the suit was one for specific performance of a contract without any prayer for possession, as the plaintiff says he is in possession; and the alternative claim was the larger one.[3] A suit by a Hindu after majority to avoid a release deed by their mother, and for injunction, which looking to the substance of it, must be treated as one for the cancellation of the instrument will come under S. 7 (iv) (*a*) of the Act.[4] But a suit by a minor for possession, is maintainable without seeking cancellation of a transaction by a guardian which can be treated as a nullity, and S. 7 (iv) (*a*) would not apply.[5] A suit for declaration of invalidity of a decree obtained against the *Karnavan*, and for recovery of tarwad properties involves consequential relief which has to be valued at plaintiff's option.[6]

102. VALUATION FOR COURT-FEE.—The fee payable under S. 7, Cl. (iv) of Act VII of 1870, is "according to the amount at which the relief sought is valued in the plaint," and not the value of the subject-matter of the claim. In a suit for cancellation of a document securing property having a money value, the amount or value of the property for which the document was executed is the amount on which the *ad valorem* Court-fee is to be paid:[7] A suit of the nature comprised under S. 7 (iv) (*a*) is such that its market-value is impossible of determination, and hence the Legislature has, with strong reasons, left the fixing of the valuation to the plaintiff.[8] In an early Bombay case,

(50) *Sahig Ram* v. *Dewan Mahomed Fazlullah Khan*, 39 P.R. 1875.

(1) *Parathayi* v. *Sankumani*, 15 Mad. 294.

(2) *Dentaluri Venkata* v. *Chandrayya*, 105 I.C. 171=1927 Mad. 825 =53 M.L.J. 267.

(3) *Fakir Chand* v. *Ram Datt*, 80 I.C. 953=5 Lah. 75=1924 Lah. 439.

(4) *Doraiswamy* v. *Thangavelu*, 119 I.C. 38=1929 Mad. 668.

(5) 112 I.C. 96=1928 Mad. 816; *cf.* 119 I.C. 38=1929 Mad. 668; *also see* 117 I.C. 800=1929 Mad. 307 (Mortgage by father not binding on son).

(6) *Achattil Balakrishna* v. *Vishnu Nambudri*, 1931 Mad. 375=132 I.C. 129=1930 M.W.N. 509.

(7) *Alagar Aiyangar* v. *Srinivasa*, 91 I.C. 709=1925 Mad. 1248.

(8) *Manohar Ganesh* v. *Bawa Ramcharudas*, 2 Bom. 219=2 Ind. Jur. 602.

where the suit was to recover possession of documents securing a sum of Rs. 3,000, the suit was allowed to be valued at plaintiff's choice.[9] Where a suit in which plaintiff prays for setting aside of a decree, involving a declaration that the previous decree is not binding on the plaintiff, on account of fraud in obtaining it, and that so far as he is concerned that decree is wiped out, falls within S. 7 (iv) (*A*), and also under S. 7 (v), if the previous decree was one for recovery of money or property having a money value.[10] Similarly, in *Venkatasiva Row* v. *Satyanarayana,*[11] where a decree was sought to be set aside and possession as a result of such setting aside of the decree was also asked for, the learned Judges held that the case fell both under S. 7 (iv) (*a*), and S. 7 (5), but they did not say that both the provisions applied to the case, and that the plaintiff shall pay Court-fee under the two provisions. In *Rajagopal* v. *Vijiaraghava,*[12] the claim in possession in that case was asked consequently on the grant of declaration for cancellation of the decree, and not on any other ground. In *Lakshmi Ammal,*[13] it was similarly held, that the main relief claimed in a suit by vendee to set aside the sale, (where the relief asked for was the return of consideration and some damages), is really the setting aside of the conveyance, and the claim for money is one ancillary to it. Accordingly, it has been recently held, on a review of the above authorities, that the claim with regard to possession of the property is ancillary to the setting aside of the document, and if so, S. 7 (4-*A*) is the only provision under which the Court-fee has to be levied.[14] The principle is recognised that where a special provision applying to particular case exists, the special provision should be followed rather than the general classification in which the suit may also be included, which may be more favourable to the plaintiff.[15] For example, a suit to set aside or cancel a previous decree falls under the general description of declaratory suits, but now comes under S. 5 (4-*A*), which relates to certain suits for cancellation of decrees, and Court-fee has now to be paid under the new specific sub-section rather than under the general class of suits for declaratory decrees.[16] A Full Bench of the Madras High Court, in *Arunachellam Chetty* v. *Rangasami Pillai,* had held that "a suit in which the plaintiff in terms prays for a declaratory decree, and consequential relief *prima facie* comes within Cl. (4), Sub-Cl. (*c*), S. 7, Court-Fees Act, but if, at the same time it comes within any of the other classes of suits specified in the section, it must be treated as a suit of that description and dealt with accordingly". In *Dantaluri Venkata* v. *Dantaluri*

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(9) B.P.J. 1894, p. 145.

(10) *Chinnamal* v. *Madarsa Rowther,* 27 Mad. 480.

(11) 139 I.C. 317=1932 Mad. 605=63 M.L.J. 764.

(12) 38 Mad. 1184=25 I.C. 683=1915 Mad. 550.

(13) 91 I.C. 729=1926 Mad. 96.

(14) *Thangachi Ammal* v. *Mahomed Moideen,* 1933 Mad. 231 (2)=64 M.L.J. 127=37 M.L.W. 146.

(15) *Venkatasiva* v. *Venkatanarasimha,* 1932 Mad. 605 (608)=139 I.C. 137=63 M.L.J. 764.

(16) *Ibid.,* 1932 Mad. 605 (608)=139 I.C. 137, *supra.*

Chandrayya[17] the Madras High Court observed, that "which there is in the Act itself a special rule, as to valuing property in suit, for Court-fees, it is proper to take that method of valuation, in preference to any other method, to get the value where there is no indication that any other method should be adopted." Accordingly, it was held that where the appellants ask for the decree to be set aside, and the subject-matter of that decree so sought to be set aside is the whole of immovable property in that suit, the statutory value should be adopted for the purpose of valuation. This authority is referred to in *Sarangapani* v. *Pichu Ayyar*[18]where the question arose, what is the method for valuing the property for the purpose of appeal in a suit to contest a mortgage by Hindu father, where the sons appealing alleged that their share was not liable. The appellant's argument was that the method of valuation to be adopted is the method mentioned in S. 7, Cl. (v), which is mainly based on the annual revenue to Government in cases of revenue paying lands. The High Court observed that "the obvious objection to that argument is that that is a method of valuation fixed for suits for possession", adding that "the same method has now been by the Amendment of the Court-Fees Act by the Madras Legislature, made applicable to suits under S. 7 (iv), (*c*), where the relief sought is with reference to immovable property, and the same method of valuation has been, by the decision in *Venkatanarasimha* v. *Chandrayya*[19] extended to cases falling within S. 7 (iv-*A*) recently added by the Madras Act above mentioned." Where the claim with regard to possession of the property is only ancillary to the setting aside of the document, no Court-fee has to be paid under S. 7 (v); but the fee is leviable under S. 7 (iv-*A*) of the Act.[20]

103. MADRAS AMENDMENT OF 1922.—By Madras Act V of 1922, a proviso relating to the valuation of immovable property is added to Cl. (*c*) as the penultimate paragraph. A new paragraph S. 7 (iv-*A*), relating to valuation of suits for cancellation of decree or document, is also added.

It has been held, in *Thangachi Ammal* v. *Mohamed Moideen*,[21] by Madhavan Nair, J., that in a suit by vendor for setting aside a sale-deed, and for recovery of possession of the property covered by the deed, the plaintiff is not bound to pay Court-fee in respect of the claim for recovery of possession of the land from the defendant, which is only ancillary to the main claim which is the setting aside of the sale-deed. Prior to this amendment in 1922,

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(17) 1927 Mad. 825=105 I.C. 171.
(18) 1931 Mad. 710=135 I.C. 11.
(19) 105 I.C. 171=1927 Mad. 825.
(20) 1933 Mad. 231 (2)=64 M.L.J. 127=37 M.L.W. 146.
(21) 1933 Mad. 231 (2)=64 M.L.J. 127=37 M.L.W. 146; citing In re *Lakshmi Ammal*, 91 I.C. 729=1926 Mad. 96; and *Venkatasiva Rao* v. *Satyanarayanamurthy*, 139 I.C. 137=1932 Mad. 605; also *Rajagopal* v. *Vijayaraghavalu*, 38 Mad. 1184=25 I.C. 683=1915 Mad. 550; [S. 7 (4) (*c*) has no application to suits for setting aside of conveyances, where the claim for money, or for possession is ancillary to it].

and the new Cl. (iv-*A*), suits of this nature fell under S. 7 (iv) (*c*). It has been explained in *Venkatasiva Rao* v. *Venkatanarasimha*[22] that the new Sub-S. (iv-*A*) covers certain suits for cancellation of decrees, which is to be interpreted as meaning decrees for money or other property having a money-value. The result is that for suits for cancellation of, or setting aside, decrees which have been made for the recovery of money or for the recovery of property having a money value Court-fee has to be paid under the new sub-section which is a special provision to be applied in place of some general classification, in which the suit may also be included, which may be more favourable to plaintiff. "*Prima facie* after 1922, a suit to cancel a decree (which is the same as a suit to set aside a decree) would no longer be governed by S. 7 (iv) (*c*): otherwise no meaning can be attached to the new provision contained in S. 7 (iv-*A*)."[23] S. 7 (iv-*A*) is quite different from S. 7 (iv) either (*a*), (*b*), or (*c*), and the proviso has been added only to S. 7 (iv). This section does not describe the mode in which the "value of the property for which the decree was passed is to be calculated," and *Venkatanarasimha* v. *Chandrayya*[24] is an authority for the view that in such cases it is not the market-value but the statutory value that has to be adopted where statutory value has been fixed by the Act." The proviso does not lay down that if the relief sought properly falls within any other provision requiring a higher valuation or charge that higher valuation is not to be made. The proviso merely introduces a downward limit below which relief sought in respect of immovable property consequential on declaratory decrees shall not be valued."[25]

104. JURISDICTIONAL VALUE.—The value for jurisdiction is the same as for Court-fees, under S. 8, Suits Valuation Act. This value follows the value fixed by the plaintiff, under S. 7 (iv) (*a*), of the Court-Fees Act: or, the value of the subject-matter of suit, if the suit comes under the Madras Amendment of 1922. The Proviso to this new sub-clause enacts "that in suits coming under Sub-Cl. (*c*) in cases where the relief sought is with reference to any immovable property, such valuation shall not be less than half the value of the immovable property calculated in the manner provided by paragraph (5) of this section."

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(22) 1932 Mad. 605=139 I.C. 137=63 M.L.J. 764.

(23) Per Anantakrishna Ayyar, J., in 1932 Mad. 605 (610)=139 I.C. 137=63 M.L.J. 764; also see *Doraiswami Mudaliar* v. *Thangavelu*, 119 I.C. 38=1929 Mad. 668. (*Held*, that a suit by Hindu son to declare release-deed executed by mother-guardian during minority is invalid, falls under S. 7 (iv-A), as release-deed is a document "securing property": and the Court-fee must be paid on the amount or value of the property for which the document was executed); *also see* the same effect, 91 I.C. 709=1925 Mad. 1248.

(24) 105 I.C. 171=1927 Mad. 825.

(25) *Venkatasiva Rao* v. *Venkatanarasimha*, 1932 Mad. 605=139 I.C. 137=63 M.L.J. 764.

S. 7 (4) (*b*) :—Right to share in joint family property.

Synopsis.

105. Scope and applicability.
108. Partition suits by co-sharer in joint-possession.
116. Different kinds of suits for partition.
121. Valuation for Court-fees.
124. Court-fees in appeal.
125. Non-liability of dependants.
126. Valuation for jurisdiction.

Comments.

105. SCOPE AND APPLICABILITY.—This sub-clause deals with a suit to enforce the right to share in joint-family property, moveable or immoveable, which is one of the six different classes of suits comprised in paragraph (4), all of which are claims for a relief not properly assessable in money. As explained in the leading Bombay case on the subject[26] the clause refers to a suit to enforce the "right to *share*" in any property, not the right to "a share" in property. These words suggest that the suit is for the enforcement of an abstract claim or right, "and that would bring the Clause (*b*) into proper logical neighbourhood with the other clauses of the paragraph".[27] According to this view, a suit to obtain possession of land by partition, which has an easily ascertained market value, is not one falling under S. 7 (iv) (*b*), but under S. 7 (v), as being a suit for the possession of land. This view discented from in the Madras Full Bench case, of *Rangiah* v. *Subramaniah*.[28]

106. This clause APPLIES ONLY TO "JOINT FAMILY PROPERTY" within the meaning of Hindu Law. The incidents of joint family property, under Hindu Law, or coparcenary property as it is called, are well-known. Such property is distinguishable from joint property of English Law, which also devolves by survivorship, but the male issue of the "joint tenants," do not acquire any joint interest in it by birth, which is an incident of joint family or coparcenary property.[29] The Madras Full Bench ruling in *Rangiah Chetty* v. *Subramania Chetty*[30] points out that the language of the clause is in accordance with the theory of Hindu Law as regards a coparcener not being entitled to a definite share until actual partition, and his becoming entitled to a definite share only when a decree for partition is made in the suit.[31]

(26) *Dadgu* v. *Tata Ram*, 33 Bom. 658 (663)=11 Bom. L.R. 1074=4 I.C. 243.

(27) Per Batchelor, J., in 33 Bom. 658 (663), *supra*. (It is not clear, whether plaintiff was out of possession of property in suit.)

(28) *See* f.-n. (30) below; (21 M.L.J. 21=9 M.L.T. 3=8 I.C. 572 (F. B.); White, C.J., observed, that "S. 7 (4) (*b*) applies when the right which is sought to be enforced is a right to share, *as a separate sharer*, in joint-family property; in other words, it applies to the ordinary suit for partition"; Krishnaswamy, J., concurred; but Ayling, J., agreed with the Bombay view, that the clause specifically provides for a right to share, *as a joint-shares* in joint-family property. This last view was accepted by Barton, J.C., (Peshawar), in *Chanderbal* v. *Dinanath*—80, Judicial Record [*see* f.-n. (42), post].

(29) *Karsandas* v. *Gangabai*, 10 Bom. L.R. 184=32 Bom. 479.

(30) 21 M.L.J. 21=8 I.C. 512 (Per Krishnasami Aiyar, J.).

(31) *Ibid.*, 8 I.C. 512 (515); cf. *Dagdu* v. *Tota Ram*, 33 Bom. 658=4 I.C. 243; and *Bidhata Roy* v. *Ram Charitra*, 22 Bom. 315.

Accordingly, it was held by the Full Bench that S. 7, Cl. (iv) (*b*) does apply to a suit by a coparcener in possession for partition of joint family property.[32] This clause, therefore, has no application where the property in dispute is not joint family property[33] the phrases "on the ground that it is joint family property" means that the property belongs to a joint family on the date of the suit."[34]

107. It was held in *Abdul Kader* v. *Bapubai*,[35] that a SUIT FOR PARTITION BY A MUHAMMADAN IN THE BOMBAY PRESIDENCY is hardly distinguishable from a suit for partition of joint family property amongst Hindus. But Muhammadan coheirs hold the property as tenants in common, by rule of succession, and not as joint-tenants with rights of survivorship, and vested birth-interests.[36] Consequently, as held by the Madras High Court in *Kurshit Khatun* v. *Hyderkhan*,[37] a suit by a Muhammadan co-sharer for partition and possession of deceased father's properties, alleging joint possession, is not one falling under S. 7 (iv) (*b*), but falls under Art. 17, Cl. (vi) of the Second Schedule.

108. SUITS BY CO-SHARER IN JOINT POSSESSION.—SUITS BY CO-SHARER IN JOINT POSSESSION for partition, fall under S. 7 (iv) (*b*) of the Act, but there is a great divergence of view amongst the different High Courts, as to the class of suits to which this clause applies, and more particularly as to the method of valuation for purposes of Court-fee and jurisdiction, when plaintiff alleges or is found in possession, of property claimed to be joint family property.

109. Allahabad.—As regards SUITS BY CO-TENANTS IN ALLEGED JOINT POSSESSION, the view taken by the ALLAHABAD HIGH COURT in *Tarachand* v. *Afzalbeg*,[38] following same earlier decisions of the same High Court,[39] and supported by the decision of Calcutta High Court in *Bidhata Rai* v. *Ram Charitra*,[40] was that "where the plaintiff alleges that he is in possession and merely claims partition of the property, and separate possession of his share, a Court-fee stamp of Rs. 10 is sufficient.

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(32) *Velu Gounden* v. *Kumaravelu Gounden*, 20 Mad. 289, folld. in 8 I.C. 512 (515) (F.B.), *supra*.

(33) Reference under S. 5, 4 M.L.J. 110; *Nikka* v. *Fazaldad Khan*, 1930 Lah. 839=123 I.C. 525.

(34) *Rangiah Chetty* v. *Subramaniah Chetty*, 8 I.C. 512 (513)= 21 M.L.J. 21 (F.B.).

(35) 23 Bom. 188=B.P.J. (1898), p. 135.

(36) *Abdul Wahid* v. *Nuranbibi*, (1885) 11 Cal. 597=12 I.A. 91 (P.C.); *Humeeda* v. *Budlum*, (1872) 17 W.R. 525; *Hassan Ali* v. *Nazo*, (1889) 11 All. 456; *Abdool* v. *Goolam*, (1905) 30 Bom. 304.

(37) 75 I.C. 93=1923 M.W.N. 564=1924 Mad. 207; citing *Gill* v. *Lingamallu*, 43 Mad. 396, and *Ahmuddin* v. *Amiruddin*, 44 I.C. 216.

(38) 34 All. 184=13 I.C. 135.

(39) *Reoti* v. *Lachhman*, (1900) A.W.N. 90; and *Waliullah* v. *Durga Prasad*, 28 All. 340=3 A.L.J. 181=1900 A.W.N. 38; (Suit by the purchaser of a coparcener's share).

(40) 6 C.L.J. 651=12 C.W.N. 37.

COURT

110. Bombay.—In *Motibhai* v. *Haridas*,[41] the Bombay High Court, applying S. 7, Cl. (*b*), to a suit for partition of certain property, valued at over Rs. 5,000 allowed the plaintiff to assess the value of his share at Rs. 250, and pay Court-fees on that amount. The Bombay view in *Dagdu* v. *Tota Ram*,[42] however, has been generally considered to be in conflict with views of Allahabad, Lahore, and Madras High Courts, on the one hand, where *ad valorem* fee is held leviable under Cl. (iv) (*b*) of the Act, and with Calcutta and Patna Courts, where a fixed fee is levied under Art. 17 (6) of Sch. II of the Court-Fees Act.

111. Calcutta.—THE CALCUTTA HIGH COURT held in the leading case of *Kirty Churn* v. *Annath Nath*,[43] that where plaintiff is already in possession of his share, and all that he wants is, to obtain a partition, which is merely, as explained by the learned Judges in the case of *Rajendro Loll Goswami* v. *Shama Churn Lahoory*,[44] to "change the form of his enjoyment" of the property, or in other words, to obtain a divided, instead of an undivided, share, it would be impossible to say what will be the value to the plaintiff of this change in the nature of his property, and a stamp-fee of Rs. 10 is sufficient under Art. 6, Cl. (17), Sch. II of Act VII of 1870. The case of *Bidhata Rai* v. *Ram Charitar*[45] was relied upon in *Shastu Bhushan* v. *Jotindra Nath*[46] in holding that if the plaintiff has title to the property and is a co-owner of that property with the defendant, the suit is one for partition of joint property, and not one for declaration of title and recovery of possession. The same view was taken in *Beni Madhab* v. *Govinda Chandra*.[47] The Calcutta view is that a fixed Court-fee of Rs. 10 is sufficient in partition cases where plaintiff is in possession of his share actual or constructive: and where he is out of possession of his share he has to pay Court-fee as in a suit for possession, *ad valorem* under S. 7 (v) (*e*), and the claim does not fall under S. 7 (iv) (*b*) of the Court-Fees Act.[48]

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(41) 22 Bom. 315.

(42) 33 Bom. 658=4 I.C. 243; also see *Balvant Ganesh* v. *Nana Chintaman*, 18 Bom. 208; cf. *Rangiah Chetty* v. *Subramaniam*, 8 I.C. 512 (515)=21 M.L.J. 21=9 M.L.T. 3; (Points out that it is not clear from the facts set out in Bombay cases whether the plaintiff was in joint possession at the date of suit).

(43) 8 Cal. 757=11 C.L.R. 95.

(44) 4 C.L.R. 418.

(45) 11 C.L.R. 95=12 C.W.N. 37=6 C.L.J. 651; (*Held*, that Cl. 4 (*b*) refers to suits for joint-possession, and not to a suit for partition).

(46) 10 I.C. 463=15 C.L.J. 443.

(47) 46 I.C. 165=22 C.W.N. 669; (Suit for partition of plaintiff's share of the joint-property, requiring a Court-fee of Rs. 10 under Art. 17 (6) of 2nd Schedule).

(48) *Lokenath Singh* v. *Dhwakeshwar Prasad*, 27 I.C. 465=20 C.W.N. 51=21 C.L.J. 253; (*Held*, that a person seeking partition must be in possession of his share, actual or constructive); *also see* In the matter of *Nandlal Mukherji*, 1932 Cal. 227=59 Cal. 315=136 I.C. 600=35 C.W.N. 942; also see *Ibid.*, 1932 Cal. 353=137 I.C. 519=54 C.L.J. 317=36 C.W.N. 291; (Where the plaintiff asserts his possession, it is unnecessary to

112. Punjab.—In *Raghbar Dial* v. *Salig Ram*[49] that where plaintiff sued for partition of his share of the paternal estate against his other brothers, alleging that all the parties were in joint possession of the entire property, though the elder brother had the entire control, as the manager of the joint family, and the plaintiff, a minor suing by next friend, asked to be put in separate possession of his one-third share of the estate, it was held by Rivaz and Chatterji, JJ., that the suit fell under S. 7, Cl. (iv) (*b*) of the Court-Fees Act, as one "to enforce the right to share in any property on the ground that it is joint family property, nonetheless so because the plaintiff's share was admitted, and his right to obtain separate possession was all that was denied: the clause being framed so as to cover all cases within its general purview where something more than a mere declaration of right is sought for, and consequential relief, whether it be in the form of joint possession, separate possession, an injunction, or whatever other relief may be appropriate is asked for." Where plaintiff claimed for settlement of accounts and recovery of his share of the parties' joint family property, the Punjab Chief Court, in *Hari Chand* v. *Jiwanmal*,[50] it was held that the suit being one to enforce the right to share in the property, on the ground that it is joint family property, the case came under S. 7 (iv) (*b*) of the Court-Fees Act. In *Dwarka Das* v. *Krishan Kishore*,[1] this ruling was distinguished on the ground that the suit therein was for partition and for possession of a definite share of joint property. But in *Fatteh Chand* v. *Bilas Ram*,[2] where the suit was by one co-sharer against four other co-sharers, for possession by partition of certain joint land, and after a preliminary decree settling shares the Court appointed a Commissioner, and directed auction of separate pieces of immoveable property among the parties, the total sum thus realized to be divided among the parties proportionately, and one of the defendants filed an appeal objecting to the mode of partition on Rs. 10 Court-fee stamp, it was held by the Court,[3] that S. 7 (iv) (*b*) had no application to the case, as it was impossible to assign a value to defendant's claim and that under the circumstances, a Court-fee of Rs. 10 under Art. 17 (6), Sch. II, Court-Fees Act, was sufficient, and correct. To the same effect is the decision of THE LAHORE HIGH COURT in *Harcharan Das* v. *Sukhraj Das*.[4] It was observed, (Sir Shadilal, C.J. and Willberforce, J.) that where in an appeal arising out of a partition suit, there is no longer any dispute about the share to which each co-sharer was entitled, and the appeal seeks only to

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pay Court-fee on a claim for possession, and only a claim for partition, on a fixed Court-fee of Rs. 10 is sufficient).

(49) 104 P.R. 1895.

(50) 28 P.R. 1903—per Clark, C.J.

(1) 2 Lah. 114=61 I.C. 628; (S. 7 (4) (*b*) is applicable to suit to enforce a right to share in any joint-family property).

(2) 96 P.R. 1916=34 I.C. 857.

(3) Johnstone, C.J. and Scott-Smith, J.

(4) 62 I.C. 979.

impeach the mode of partition, it is not possible to estimate at a money value the subject-matter in dispute in appeal, and following *Fatteh Chand* v. *Bilas Rai*[5] it was held that the case came within the purview of Art. 17 (6), of the Second Schedule, of the Court-Fees Act. Similarly, in *Nikka* v. *Fazaldad Khan*[6] (Tekchand and Aga Haidar, JJ.), the Lahore High Court held that in an appeal from a suit for possession by partition of certain land where the plaintiff alleges that he was in joint possession of the property in suit, and the finding of the trial Court is to the effect that he was in such possession, the provisions of the Court-Fees Act applicable are Art. 17 (6), Sch. II, and not S. 7 (iv) (*b*), the Court-fee payable in such case being Rs. 10, and not an *ad valorem* Court-fee on the market price of plaintiff's share of the property. The rulings in *Raghbar Dial* v. *Salig Ram*,[7] *Fateh Chand* v. *Bilas Rai*,[8] and *Hari Chand* v. *Jeeva Mal*,[9] were distinguished. The authorities cited in support of the view that Art. 17, Cl. (6) of Sch. II applied to the case where the plaintiff stated, and was found, to be in possession, were from Allahabad,[10] Calcutta,[11] and Madras[12] cases. S. 4 (*b*) was not applicable as the parties to the litigation were strangers and the property in dispute was not joint family property.[13] In the case of co-sharer filing a suit for partition while in possession of part, there can be no doubt that S. 7, Cl. (iv) (*b*), applies, and not Art. 17 of Sch. II of the Court-Fees Act. The case in *Dagdu* v. *Totaram*,[14] of Bombay High Court, was dissented from, in *Rakhi* v. *Khairan*,[15]

113. Madras.—It was held in *Gill* v. *Varadaragavayya*,[16] that a suit by a co-tenant for partition of certain immoveable property of which he alleges he is in joint possession, is not a suit to enforce a right to share in the possession of property on the ground that it is joint family property within the meaning of S. 7 (iv) (*b*) of the Court-Fees Act, though this sub-section

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(5) 96 P.R. 1916=34 I.C. 857.

(6) 1930 Lah. 839=123 I.C. 525=31 P.L.R. 315.

(7) 104 P.R. 1895 (clearly a case under S. 7 (4) (*b*) of the Act).

(8) 96 P.R. 1916=34 I.C. 587 (question relating to mode of partition only).

(9) 28 P.R. 1903=65 P.L.R. 1903 (plaintiff alleged being out of possession).

(10) *Tarachand Mukerji* v. *Afzal Beg*, 34 All. 184=18 I.C. 185.

(11) *Kirty Churn Mitter* v. *Annath Deb*, 8 Cal. 757=11 C.L.R. 95; also *Ahmaduddin* v. *Amiruddin*, 44 I.C. 216.

(12) *Gill* v. *Varadaraghavayya*, 43 Mad. 396=55 I.C. 517.

(13) Per Tek Chand, J., in *Nikha* v. *Fazaldin*, 1930 Lah. 839=123 I.C. 525=31 P.L.R. 315.

(14) 33 Bom. 658=4 I.C. 243.

(15) Per Harrison, J., in 1932 Lah. 421, following *Nikha* v. *Phula*, 27 P.R. 1895; *Hari Chand* v. *Jiwan Mal*, 28 P.R. 1903; and, two unreported cases, C.A. 4581 of 1925, and 2305 of 1924, of the Lahore High Court.

(16) 43 Mad. 396=38 M.L.J. 92=55 I.C. 517=1920 M.W.N. 124.

would apply to suits for partition of joint family property as decided by the Full Bench of MADRAS HIGH COURT in *Rangiah Chetty* v. *Subramania Chetty*.[17] However, S. 7 (iv) (*b*) has no application where the property is not the property of a joint family. "It must be admitted that a suit by a tenant in common in joint possession for the partition of the common property not belonging to a joint family cannot fall under this clause" and "as the relief in such a case cannot be estimated at a money value, Art. 17 (6) is the only provision applicable".[18] It was held by Wallace, J., in *Ramakrishna* v. *Muthuswamy Iyer*,[19] where the suit for joint possession is not on basis of plaintiff's ouster, or a denial of his right to possession as a co-sharer, Cl. (iv) (*b*) applies and the plaintiff has to pay Court-fee on his own valuation. When there has been a division in status, the family can no longer be described as a joint family, though the property of the family has not been divided by metes and bounds.[20] It was held, by Odgers, J., in *Prathipati Suryanarayana* v. *Prathipati Seshayya*,[21] that where the suit is for partition of a joint Hindu family which has already been divided, the relief is merely a prayer to change the form of enjoyment, to which Art. 17 (6) alone should be applied. In *Bethasami Naicken* v. *Nagammal*, the plaint set out a claim by the plaintiffs in the alternative characters of members of a joint family, or of tenants in common for a declaration with consequential relief by way of injunction, and the Madras High Court held that the case fell under S. 7 (iv) (*c*) of the Court-Fees Act, and that Court-fee should be paid under the Madras Amendment of 1922, in the manner provided by paragraph (v) of S. 7 of the Court-Fees Act. In another recent Madras case, *Sundra Ganapathi* v. *Daivasikamani*,[22] where there was a partition deed and the plaintiff alleged that it had been brought about by fraud and instituted a suit for partition *and to get over the effect of partition deed*, the Court held that S. 7 (iv) (*b*), would apply on the ground that the plaintiff alleged that he and the defendants were co-tenants, but that S. 7 (iv) (*c*) applied if the allegation as regards the partition deed was seriously insisted upon.

114. Patna.—The Patna High Court holds that in a plain suit for partition, the Court-fee is Rs. 10. If it is in essence a suit to obtain a decree for money or a decree for immovable property, then an *ad valorem* Court-fee must be paid.[23] In *Lachmi*

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(17) 8 I.C. 512=21 M.L.J. 21=1910 M.W.N. 755.

(18) Per Krishnaswami Aiyar, J., in 8 I.C. 512 (514)=21 M.L.J. 21 (F.B.).

(19) 1925 Mad. 468=86 I.C. 627=21 M.L.W. 207; (Where there is no ouster by defendants of plaintiff from joint-possession of joint-family property, S. 7 (4) (*b*), applies).

(20) *Srinivasa Iyer* v. *Krishnaswamy Iyer*, 1931 Mad. 49=129 I.C. 462=1930 M.W.N. 508=59 M.L.J. 913.

(21) Also see *Suryanarayana* v. *Seshayya*, 1926 Mad. 122.

(22) 1931 Mad. 94=129 I.C. 824=1930 M.W.N. 358.

(23) *Gobind Dube* v. *Parmeshwar Dube*, (1919) 49 I.C. 115.

Sahu v. *Radha Krishna*[24] it was held "that there must be unity of title as well as of possession to entitle plaintiff to maintain an action for partition". Similarly, it was pointed out in *Dipchand Rai* v. *Chhetrumal*[25] that a clear distinction is to be drawn between partition suits where the plaintiff alleges that he is in possession of his undivided share in the property in suit, requiring a Court-fee of Rs. 10 only;[26] and, "cases in which a partition suit is merely A TITLE SUIT IN DISGUISE".[27] There is a distinction also between suits for partition pure and simple, where the plaintiff is in joint possession of his share, and there is no dispute as to his title or share, and suits where the plaintiff seeks for an adjudication of his title, or the extent of his share, and *for partition after such adjudication*.[28] It was held, therefore, that "plaints in all suits for partition should be carefully examined".[29] and "one must look to see what is the real nature of the claim":[30] and the general rule laid down is that if plaintiff is out of possession of his share,[31] and the suit is obviously a suit to recover possession of that part of the property at least of which the defendants hold possession in denial of plaintiff's title therein, a Court-fee *ad valorem* on the share claimed in that part must be levied.[32] In *Sitharam Jha Pandey* v. *Lokenath Missir*, it was held that a person cannot be allowed, under the guise of a partition action, to bring an action of ejectment.[33] However, where the suit is a simple suit for partition, and nothing else, it makes no difference that the defendants dispute the title or possession of the plantiffs;[34] nor the fact that the suit is in respect of properties standing in the names of various members of the joint family.[35]

115. OTHER COURTS.—THE NAGPUR COURT follows the Calcutta view. It was held in *Manaji* v. *Sitaram*[36] that "ordinarily, where the plaintiff, in the case as laid by him in the plaint, affirms

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(24) 51 I.C. 77.

(25) 56 I.C. 570=1 P.L.T. 529.

(26) *Bidhata* v. *Ram Charitar*, 6 C.L.J. 651=12 C.W.N. 37; *Shashi Bhusan* v. *Jotindra Nath*, 10 I.C. 463=38 Cal. 681; also see *Tara Chand* v. *Afzal Beg*, 34 All. 184=13 I.C. 185=8 A.L.J. 132.

(27) *Kirty Churn* v. *Annath Deb*, 8 Cal. 757=11 C.L.R. 95; *Balwant Ganesh* v. *Nana Chintan*, 18 Bom. 209; and *Waliullah* v. *Durga Prasad*, 28 All. 340=3 A.L.J. 181=1906 A.W.N. 38.

(28) *Ranjit Sahi* v. *Maulvi Qasim*, 72 I.C. 916=2 Pat. 432.

(29) *Dipchand* v. *Chhetrumal*, 56 I.C. 570=1 P.L.T. 529.

(30) *Rachhaya Raut* v. *Chando*, 65 I.C. 294=1923 Pat. 113=6 P.L.J. 662=3 P.L.T. 293.

(31) *Dukhi Singh* v. *Harihar Shah*, 58 I.C. 236 (237)=1921 Pat. 89=1 P.L.T. 595=1921 (A.I.R.) Pat. 28.

(32) *Dip Chand* v. *Chhetrumal*, 56 I.C. 570=1 P.L.T. 529; also see *Rachhaya Raut* v. *Chandra*, 65 I.C. 294=1923 Pat. 113=6 P.L.J. 662=3 P.L.T. 293.

(33) 81 I.C. 1052 (1055)=3 Pat. 618.

(34) *Rachhaya Raut* v. *Chandro*, 65 I.C. 294=1923 Pat. 113=6 P.L.J. 662=3 P.L.T. 293.

(35) *Basukhi Behari* v. *Chatter Pandey*, 79 I.C. 913; cf. F.A. 64 of 1923; Where some properties stood in the name of strangers).

(36) 1924 Nag. 105=81 I.C. 643.

that he is in possession of a portion of the joint estate and claims a change in the mode of enjoyment of the property and prays for separate possession of his share as the result of re-distribution of the property under the separate management of the parties, his suit is one for partition, and separate possession of his share in the entire property, and as such the claim falls under Art. 17 of Cl. (6) of Sch. II of the Court-Fees Act, and a fixed-fee of Rs. 10 only is payable thereon. Where, however, the plaintiff admits that his title is disputed and that he is out of possession and enjoyment of the property sought to be partitioned, and that he does not hold or possess or occupy any portion, or item, of the divisible property, and asks for partition, its suit must be treated practically as an ejectment suit, and an *ad valorem* Court-fee is leviable on a plaint in such suit.''[37] It was held that the balance of authority was in favour of accepting the plaintiff's version of the cause of action as set forth in the plaint as correct for the purpose of fixing the Court-fee payable on the plaint in a partition suit.[38] Where the relief sought is something more than a change in the mode of enjoyment and the suit is in substance one to enforce the right to share in the property on the ground that it is joint family property, plaintiff's valuation of the relief sought determines the Court-fee.[39] For example, where the plaintiffs alleged a partial partition and sought partition of that part of the family property, including certain moveables, which was kept joint at the partition, and defendants stated that plaintiffs had already separated, getting their full share, and had no right whatever in the property in suit, which was not available for partition, the suit was one clearly to enforce the right to share in property on the ground that it is joint family property falling under S. 7 (iv) (*b*) of the Court-Fees Act.[40] It was held by Findlay, J.C., in *Bhagwan Appa* v. *Shivalla Wani*,[41] following *Bhaddoo* v. *Saddoo*,[40] that where a suit is one to enforce a right to share in any property on the ground that it is joint family property, *ad valorem* fee must be paid. It was further pointed out, ''that the correct method of computation of Court-fees in suits where partition is claimed by a coparcener, who is in joint enjoyment of part of the property at the date of the suit, is to determine

(37) Per Kinkhede, A.J.C., in *Manaji* v. *Sitaram*, 1924 Nag. 105=81 I.C. 643; cited *Shripati* v. *Shridhar*, (1902) 15 C.P.L.R. 120; (Court-fee Rs. 10, sufficient in partition suits); but *ad valorem* fee, if possession not established). *Reld. Kirty Churn Mitter* v. *Annath Nath*, 8 Cal. 757; follld. in *Mohandra Chandra* v. *Ashutosh*, 20 Cal. 762; and *Bidhata Rai* v. *Ram Chariter*, 12 C.W.N. 37; (Points out distinction between a suit for partition, and a suit for ejectment); approved in, *Shastri Bhushan* v. *Jotindra Nath*, (1911) 38 Cal. 681; also see *Waliullah* v. *Durga Prasad*, 28 All. 340; and *Tarachand* v. *Afzal Beg*, 34 All. 184; and *Rangiah* v. *Subramaniah*, 21 M.L.J. 21 (F.B.); and *Gill* v. *Varadaraghava*, 43 Mad. 396; and *Dubhi Singh* v. *Hawihar*, 5 P.L.J. 540.

(38) 1924 Nag. 105=81 I.C. 643, *supra*.

(39) *Bhaddoo* v. *Saddoo*, 1924 Nag. 86=81 I.C. 766, follows; *Velu Goundan* v. *Kumaravelu Goundan*, 20 Mad. 289; and *Mothibai* v. *Haridas*, 22 Bom. 315.

(40) *Bhaddoo* v. *Saddoo*, 1924 Nag. 86=81 I.C. 766.

(41) 1927 Nag. 248=101 I.C. 770=23 N.L.R. 73.

whether merely a change in the mode of possession is asked for, or whether, in reality, the relief of ejectment is claimed. To arrive at a conclusion on such point, one has, however, to look beneath the mere form and verbiage of the plaint, and to arrive at what is its real substance'. THE JUDICIAL COMMISSIONERS, N.-W.P., had to consider the applicability of Art. 17 (6) of Sch. II and S. 7, Cl. (v), to a suit for partition of joint family property, in *Chanderbal* v. *Dina Nath*,[42] and after a review of the rulings of the various High Courts, it was held that the subject-matter in dispute was certain definite property of which plaintiff claimed separate and exclusive possession, and that the proper construction to be placed on the Court-Fees Act was that such suits must be valued either under Cl. (i) of Sch. I, or under S. 7, Cl. (v), and consequently an *ad valorem* fee must be paid. It was contended by the plaintiff, on the authority of the Calcutta case, published as XII Calcutta Weekly Notes, at P. 37, that a suit for partition of joint property is governed by Art. 17, Cl. (6) of Sch. II of the Court-Fees Act, and that the plaint was sufficiently stamped with a Court-fee of Rs. 10. In that ruling a distinction is drawn between the case in which the plaintiff is out of possession, and the case in which he alleges joint possession, and merely asks for a separation of his share. In the former case an *ad valorem* fee must be paid. On this point there is no conflict of authority, the High Courts being in practical agreement that where the suit is both for possession and partition, Court-fee must be paid on the value of the share to be partitioned. The Court held, that S. 7, Cl. (*b*) did not govern the case. "The wording of the clause does not refer by implication to the partition of a share in joint family property. It simply provides for the right to share such property, or in other words a right to enjoy that property jointly with the other co-sharers." It was observed that "had the Legislature intended to provide separately for cases in which the question of partition of joint family property arises this would have been laid down in clear terms in the Act. There is a clearly a distinction to be drawn between the right of enjoyment of joint family property jointly with the other owners and between the separation of shares in such property." As regards the applicability of Art. 17, Cl. (6), the Court "could not endorse the view that in cases where an owner in possession seeks for partition of his share it is impossible to value the subject-matter in dispute." But this ruling was not approved on this point in a later ruling of the Bench of Judicial Commissioners,[43] in No. 13, Judl. Record Vol. II; and this ruling came in for a strong criticism. It was held that the rulings quoted by Mr. Barton scarcely support his opinion that such partition suits are of a purely possessary nature and require Court-fee under S. 7 (*v*). The Bench had "no doubt that the value of such suits is not capable of estimation in money. This is certainly not the value of the property of which plaintiff claims separate and exclusive possession, for he is in constructive possession of that very

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(42) 80 J.R., Vol. I.

(43) *Mir Hassan Khan* v. *Ahmed Khan, etc.*, 13 J.R., Vol. II.

property before suit.'' The Court agreed with the view of Krishnaswamy Iyer, J., in the Full Bench Ruling of Madras High Court in *Rangiah Chetty* v. *Subramania Chetty*[43a] that ''it must be admitted that a suit by a tenant in common in joint possession for the partition of the common property not belonging to a joint family cannot fall under his clause [S. 7, Cl. (iv) (*b*)] as the relief in such a case cannot be estimated at a money value, and Art. 17 (6) is the only provision applicable.'' The property in suit in No. 13 Judicial Record, Vol. II, was not joint family property, and therefore no question of the applicability of S. 7 (iv) (*b*) arose, and the observations by Mr. Barton, in the earlier ruling on this point, are not affected by the ruling of the Bench. In holding that a suit for partition of his share by a co-proprietor in joint possession should be stamped under Art. 17 (6), Sch. II, not under S. 7 (v), the Bench followed the view taken by the Judicial Commissioner of Nagpur in *Manaji* v. *Sita Ram*[44] concurring in the opinion of the Madras High Court[45] and the same view taken by the PATNA HIGH COURT in *Dukhi Singh* v. *Harihar Shah*.[46] Where the case falls under S. 7, (Cl.) (*b*), the Court-fee payable is on the value of plaintiff's share in joint family property as determined arbitrarily by the plaintiff.[47] To the same effect is a ruling of Burma, that plaint must be stamped according to the plaintiff's valuation of his share which he seeks to recover.[48]

116. PARTITION SUITS—DIFFERENT KINDS OF—(A) Partition Suits, pure and simple—Art. 17 (6): Suits by co-owners, in joint possession, for separate share.—In *Lachhmi Sahu* v. *Radha Krishna*,[49] the Patna High Court, held that ''there must be unity of title as well as of possession, to entitle plaintiff to maintain an action for partition. A suit by cotenant in alleged joint possession, where there is no dispute as to title, and no denial of plaintiff's right to separate possession, and plaintiff is already in possession of his share, is in effect a suit to ''change the form of his enjoyment of the property'', or in other words, to obtain a divided, instead of an undivided share; IT FALLS UNDER ART. 17, CL. (6), according to the majority of High Courts. The leading case on the subject is *Kirty Churn Mitter* v. *Aunath Nath Deb*,[50] which points out that it is impossible in such cases to say what will be the value to the plaintiff of this change in the nature of his property, and therefore, it was held that a Stamp-fee of Rs. 10 is sufficient. This view has been generally followed in later CALCUTTA CASES, holding that where plaintiff is in possession of his share, actual or constructive, a Court-fee of Rs. 10 is sufficient.[1]

(43-*a*) 8 I.C. 512=21 M.L.J. 21=1910 M.W.N. 755.
(44) 81 I.C. 643=1924 Nag. 105.
(45) 8 I.C. 512 (F.B.); and *Suryanarayana* v. *Seshayya*, 90 I.C. 843=1926 Mad. 122.
(46) 58 I.C. 236=1921 Pat. 78.
(47) *Partap Singh* v. *Harkishen Singh*, 1933 Peshr. 85.
(48) 35 I.C. 731=9 Bur. L.T. 97.
(49) 51 I.C. 77.
(50) 8 Cal. 757=11 C.L.R. 95.
(1) 6 C.L.J. 651=12 C.W.N. 37=3 M.L.T. 33; *also see* 10 I.C 463=15 C.L.J. 443; cf. 27 I.C. 465=20 C.W.N. 51=21 C.L.J. 253;

THE ALLAHABAD HIGH COURT, has followed this view in *Wallivallah* v. *Durga Prasad*,[2] and in *Tara Chand* v. *Afzal Beg*,[3] which relies upon the Calcutta decision in *Bidhata Rai* v. *Ram Charitar*.[4] The BOMBAY CASE in *Dagdu* v. *Tota Ram*[5] conflicts with this view, but as pointed out in the Madras Full Bench Case of *Rangiah* v. *Subramania*[6] it is not clear if plaintiff was in possession of his share. In PUNJAB CASES, Art. 17 (6) has been applied in suits for simple partition, where plaintiff in joint possession, is claiming merely the separation of his share, without more:[7] and Art. 17 (6), has been applied also in appeals in partition suits, where mode of partition is objected to, after the preliminiary decree,[8] or where there is no longer any dispute about the share to which each co-sharer was entitled.[9] The Calcutta view, was approved by Krishnaswami Aiyar, J., in the Full Bench Case of MADRAS HIGH COURT, in *Rangiah* v. *Subramaniah*.[10] THE PATNA HIGH COURT, while distinguishing title suits in disguise, from a plain suit for partition, holds that a Court-fee stamp of Rs. 10 is sufficient if in its essence, the claim is not to obtain a decree for money, or property, or ejectment of the defendant in possession.[11] THE NAGPUR JUDICIAL COMMISSIONER'S COURT follows the Calcutta view, that a co-sharer plaintiff, in joint possession, seeking separate possession of his admitted share, merely claims a change in the mode of enjoyment, which is not assessable in money-value, and a fixed Court-fee of Rs. 10 is sufficient under Art. 17 (6), of Sch. II.[12] The JUDICIAL COMMISSIONER, N.-W.F.P., PESHAWAR, disagreed with this view in 80 Judicial Record, Vol. I, but this view has been followed in a later Bench ruling dissenting from the earlier reported case.[13] On A REVIEW OF THE AUTHORITIES, it may be taken as an established proposition that Rs. 10 Court-fee is sufficient in ordinary partition cases, provided (1) the plaintiff is in actual or constructive possession of the property in suit, and not excluded from joint possession of the property, (2) that having regard to the real nature of the claim as brought and not merely to the form of the suit, there is

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(Plaintiff failing to prove provision actual or constructive, has to amend plaint and claim joint possession); 46 I.C. 165=22 C.W.N. 669 (Additional amount for relief as to settlement of accounts); 59 Cal. 315=136 I.C. 600=1932 Cal. 227.

(2) 28 All. 340=3 A.L.J. 181=1906 A.W.N. 38.

(3) 34 All. 184=13 I.C. 185.

(4) 6 C.L.J. 651=12 C.W.N. 37.

(5) 33 Bom. 658=4 I.C. 243.

(6) 8 I.C. 512=21 M.L.J. 21 (F.B.).

(7) 1930 Lah. 839=123 I.C. 525; *Cf.* 1932 Lah. 421 (Plaintiff suing for enforcement of right to share in joint-family property, while in possession of part).

(8) 96 P.R. 1916=34 I.C. 857.

(9) 62 I.C. 979.

(10) 8 I.C. 512 (513)=21 M.L.J. 21 (27, 30) (F.B.).

(11) 49 I.C. 115; 51 I.C. 77; 56 I.C. 570; 65 I.C. 294=1923 Pat. 113; *also see* 58 I.C. 236=1921 Pat. 78; and 79 I.C. 913.

(12) 81 I.C. 643=1924 Nag. 105.

(13) No. 13, Judicial Record, Vol. II.

no dispute as to title: and (3) that the plaintiff does not pray for any relief in excess of the claim to separate possession of his share, as a change in the mode of enjoyment of the joint property.

117. (B) SUIT ALLEGING PREVIOUS PARTIAL PARTITION, AND DIVISION IN STATUS, AND FOR PARTITION BY METES AND BOUNDS—Constructive possession of plaintiff.—In (*Prathipati*) *Suryanarayana* v. (*Prathipati*) *Seshayya*,[14] the MADRAS HIGH COURT was dealing with a suit for partition based on the allegation of a previous division in status, and a division of part of moveable property amongst the co-sharers and the alleged unwillingness of the defendants to divide the rest of the property, moveables and immoveables. The plaintiff had admittedly collected and applied to his own use certain rents from the family land, and it was alleged that defendant had done the same thing with regards to other portions of the family properties which the plaintiff held the defendant liable to account for. The said property was alleged to be in the management of the defendant, and in the constructive possession of the plaintiff. It was held that it was impossible to estimate in terms of money, the value of the convenience of changing the form of the enjoyment of the plaintiff's share, and the Court-fee leviable was Rs. 15 under the present Art. 17 (*b*) in Sch. II of the Court-Fees Act. Reliance was placed on the Full Bench ruling in *Rangiah* v. *Subramania*,[15] where even the dissenting Judge, Ayling, J. had concurred in the opinion "that the correct method of regarding the relief claimed in suits for partition was that it was merely a prayer to change the form of enjoyment, and could only be valued by deducting from the value of his share as ascertained in the partition the value of his beneficial enjoyment as coparcener before partition."[16]

118. (C) DEFENDANT IN POSSESSION IN DENIAL OF PLAINTIFF'S RIGHT TO SHARE—S. 7 (4) (b).—It has been held by the NAGPUR JUDICIAL COMMISSIONER'S COURT, in *Bhaddoo* v. *Saddoo*,[17] that in a suit for partition where plaintiff alleged a previous partial partition, and sought partition of that part of the family property which was kept joint at the previous partition, but where the defendant's plea was that the plaintiff had already separated, and got his full share, having no right whatever in the property in suit, which was not available for partition, that there was a denial by the defendant of the plaintiff's right to share in property, and the suit fell under S. 7, Cl. (iv) (*b*) of the Court-Fees Act. It was explained, that as held in *Sripati* v. *Shridhar*,[18] "the valuation for the computation of Court-fees in a suit for partition depends upon whether the relief sought is merely a change in the mode of enjoyment of the pro-

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(14) 90 I.C. 843=1926 Mad. 122.
(15) 8 I.C. 512=21 M.L.J. 21=1910 M.W.N. 755.
(16) *Kirty Churn* v. *Aunath Nath*, 8 Cal. 757=11 C.L.R. 95.
(17) 81 I.C. 766=1924 Nag. 86=20 N.L.R. 43.
(18) 15 C.P.L.R. 120.

perty or the enforcement of a disputed right:'' and, that the principle underlying the decisions of the CALCUTTA HIGH COURT in *Kirty Churn* v. *Aunath Nath*,[19] and *Mohendro Chandra* v. *Ashutosh*[20] was the observation in *Ragendra Lal* v. *Shama Charu*,[21] that ''where the plaintiff is admittedly in possession, and only seeks to change the form of his enjoyment of the share,'' the stamp on the plaint would be a fixed fee of Rs. 10 under Sch. II, Art. 17, Cl. (6), of the Court-Fees Act. It was pointed out that where there is a clear denial of the plaintiff's right to share, and what is asked for is something more than a mere change in the mode of enjoyment of the property, and the suit is for a declaration of right coupled with a decree for possession, by enforcement of the right to share in property on the ground that it is joint family property, the suit comes under S. 7 (iv) (*b*) of the Court-Fees Act, and the amount of Court-fee payable is to be computed according to the amount at which the relief sought is valued in the plaint. This is the view taken by the MADRAS HIGH COURT in *Velu Goundan* v. *Kumara Velu*[22] and by the BOMBAY HIGH COURT in *Motibhai* v. *Haridas*,[23] and also in *Maroti* v. *Tukaram*.[24] The correctness of this ruling of the NAGPUR COURT, has been upheld in a later ruling, by Findlay, J. C.[25] It was observed that the mere form and language of a plaint in a suit of this nature cannot be the final test, as ''it is easily conceivable that in each and every suit to enforce a right to share in any property on the ground that it is joint family property it would be possible so to frame the suit as to bring the same under Art. 17 (6) of the second schedule to the Court-Fees Act.'' Accordingly, it was held that even though the plaintiff had framed his suit in a manner which, on a superficial view, suggested that he was a coparcener in the property held by the defendant, this fact had been found against the plaintiff in a previous suit, and ''the Court must have regard to what was, in effect, the real substance contained in the plaint as compared with the mere impression one might derive on a superficial view from the language used therein.''

119. (D) WHERE THE SUIT IS IN ESSENCE, FOR A DECLARATION OF TITLE, AND RECOVERY OF POSSESSION, UNDER THE GUISE OF A SUIT FOR PARTITION—Plaintiff not in possession—S. 7 (v).—Garth, C. J. draws a clear distinction, in the leading case of *Kirty Churn Mutter* v. *Aunath Nath Deb*,[26] between a co-sharer, already in possession of

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(19) 8 Cal. 757=11 C.L.R. 95.
(20) 20 Cal. 762.
(21) 4 C.L.R. 417.
(22) 20 Mad. 289=7 M.L.J. 30.
(23) 22 Bom. 315.
(24) 76 I.C. 934=19 N.L.R. 99.
(25) 101 I.C. 770=1927 Nag. 248=23 N.L.R. 73; (*Bhagwan Appa Wani* v. *Shivalla Wani*).
(26) 8 Cal. 757=11 C.L.R. 95.

his share, who wants to obtain a partition, involving merely a "change in the form of his enjoyment of the property," "or in other words, to obtain a divided, instead of an undivided, share," and a plaintiff whose suit "is to recover possession of, or establish his title to, the share which he claims in the property." In the latter case, "he must pay an *ad valorem* stamp-fee upon the value of that share." Similarly, it has been held by the BOMBAY HIGH COURT, in *Balwant Ganesh* v. *Nana Chintaman*,[27] that the stamp on a suit for partition and possession of the plaintiff's share of joint family property must be an *ad valorem* one on the value of his share, which being a definite share in certain lands, houses, etc., is capable of being estimated at a money value. These cases have been referred to, in *Waliullah* v. *Durga Prasad*,[28] by the ALLAHABAD HIGH COURT, (Banerji and Richards, J.J.), who held that "if the suit were merely a suit for partition," the Court-fee payable was Rs. 10 only: but, on a consideration of the plaint, the Court was clearly of opinion "that the suit was in fact a suit to establish the plaintiff's title to a one-third share in the property, and to recover possession of the same, a claim for partition being added to make the relief sought effectual." Accordingly, "the Court-fee was not the fee of Rs. 10 payable under Art. 17, Cl. (6) of Sch. II of the Court-Fees Act, but it should have been an *ad valorem* fee on the value of the share." The Court observed, "that in determining what the Court-fee should be, regard must be had to the allegations of the plaintiff in his plaint, and to the relief sought, apart altogether from evidence."[29] The CALCUTTA CASE, in *Shashi Bhushan* v. *Jotindra Nath*,[30] merely held, that if the plaintiff has title to the property and is a co-owner of that property with the defendant, the suit is one for partition of joint property and not one for declaration of title and recovery of possession. The important thing in partition suits is to see whether plaintiff, and the defendants are "as a matter of fact, co-owners of the property," and "plaintiff's possession is admitted". THE ALLAHABAD HIGH COURT, in *Tara Chand* v. *Afzal beg*,[31] while following its own previous decisions in the case of *Reoti* v. *Lachhman*,[32] and *Waliullah* v. *Durga Prasad*,[33] and further supporting its opinion by a decision of the CALCUTTA HIGH COURT, in *Bidhata Rai* v. *Ram Charitra*,[34] observes that "in all these cases it has been held that where the plaintiff alleges that he is in possession and merely claims partition of the property, and separte possession of his share, a Court-fee stamp of Rs. 10 is sufficient": but goes on to add, "But where the plaintiff is out of possession and claims possession and parti-

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(27) 18 Bom. 209.
(28) 28 All. 340=1906 A.W.N. 38=3 A.L.J. 181.
(29) *Ibid.*, 28 All. 340, *supra*.
(30) 10 I.C. 463=38 Cal. 381.
(31) (1900) A.W.N. 90.
(32) 28 All. 340=3 A.L.J. 181=1906 A.W.N. 38.
(33) 28 All. 340=1908 A.W.N. 38=3 A.L.J. 181.
(34) 12 C.W.N. 37=6 C.L.J. 651=3 M.L.T. 33.

tion, then he must pay a Court-fee calculated on the value of the share claimed by him.'' Similarly, it was held in another Calcutta case,[35] that where the plaintiff's case rests on a complete partition made years ago, and it is proved that he was never in possession of the property in dispute, he is not entitled to sue for partition without suing at the same time for possession of his share, a course entailing payment of Court-fees calculated *ad valorem*, both in the plaint and the memorandum of appeal. The same High Court, has held, in *Lokenath* v. *Dhwa Keshwar*, that ''a person who has failed to prove that he had possession, actual or constructive, of any share of the disputed property, is not entitled to maintain a suit for partition. His remedy is by a suit for joint possession, and partition, on which Court-fee must be paid *ad valorem*.[36] The BOMBAY HIGH COURT, as previously noticed, applies S. 7 (v) to a suit for separate possession by partition, and this view does not conflict with other Courts, if plaintiff in the case was not actually or constructively in possession, a point which is not clear on a statement of the facts in the case.[37] The SINDH JUDICIAL COMMISSIONER'S COURT, has held, in *Haji Yusef* v. *Ghulam Hussein Kassim*,[38] that ''no doubt, an *ad valorem* Court-fee is necessary when the plaintiff seeks partition and possession of his share'', following the Bombay view in *Balwant Ganesh* v. *Nana Chintamony*,[39] although it follows the Calcutta view in the case of *Kirty Churn* v. *Aunath Nath*[40] in holding that a suit for partition by a person claiming to be already in joint possession, is for a benefit which it is not possible to estimate at money value, and requires a Court-fee of Rs. 10 only under Sch. II, Art. 17, Cl. (6) of the Court-Fees Act. The Patna High Court has in a series of rulings held that if a suit is a plain suit for partition, the Court-fee payable thereon is Rs. 10: but ''if it is in essence a suit to obtain a decree for money, or a decree for immovable property, then an *ad valorem* Court-fee must be paid.''[41] *Ad valorem* fee then is due on the suit, or ''that part of the suit which is in effect a title suit in the guise of a partition suit.''[42] And, it is directed that ''plaints in all suits for partition should be carefully examined.'' ''Where it is patent that the defendants are in possession of any part of the property to be partitioned and have denied the plaintiff's title therein, the suit is obviously a suit to recover possession of that part of the property at least, and a Court-fee *ad valorem* on the share claimed in that part must be

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(35) *Rangamani Dai* v. *Jogendra Nath*, 3 I.C. 304=9 C.L.J. 128.

(36) 27 I.C. 465=20 C.W.N. 51.

(37) 33 Bom. 658=4 I.C. 243.

(38) 16 I.C. 771=6 S.L.R. 74, note.

(39) 18 Bom. 209.

(40) 8 Cal. 757=11 C.L.R. 95.

(41) *Gobind Dube* v. *Parmeshwar Dube*, 49 I.C. 115; *Dipchand* v. *Chhetu Mal*, 56 I.C. 570; *Rachaya Raut* v. *Chando*, 65 I.C. 294=1923 Pat. 113; also see *Harnarayan* v. *Swesh*, 63 I.C. 203; citing *Lachhmi Sahu* v. *Radhakishan*, 51 I.C. 77; *Mohammad Abdul Karim* v. *Mohd. Yusaf*, 51 I.C. 114; and *Mutsaddi* v. *Habib Mians*, 39 I.C. 579.

(42) *Dip Chand* v. *Chhetru Lal*, 56 I.C. 570=1 P.L.T. 529.

levied.''[43] THE PATNA COURT holds that ''one must look to see what is the real nature of the claim'': ''If it is merely a suit claiming a partition and nothing else, then it makes no difference that the defendants by their written statement raise a question disputing the title or possession of the plaintiffs; but if, in the very forefront of their claim they (the plaintiffs) ask the Court for a declaration of their title and possession, then, they are claiming under the guise of a partition suit a declaration of their title, which is the proper subject-matter of a title suit''.[44] And, it has been expressly ruled in *Dukliv Singh* v. *Harihar Shah*,[45] that where plaintiff is out of possession of his share in the joint family property, he is required to pay *ad valorem* Court-fee under S. 7, Cl. (iv) of the Court-Fees Act, upon the valuation of his share in the property. As remarked by Barton, J.C., in a Peshawar case,[46] ''on this point, it may be noted that there is no conflict of authority'': and that an *ad valorem* fee must be paid in a case in which the plaintiff is out of possession. The Bench case in *Mir Hassankhan* v. *Ahmad Khan*[47] which a took a different view of the application of Art. 17, Cl. (6), of the Second Schedule, was decided on the footing that ''it was in essence, a suit for partition amongst co-proprietors,'' and it was pointed out ''that it is admitted that plaintiff is in possession of part of the property of which partition is sought, and that he must be regarded as being in joint possession of the whole, the possession of one co-sharer being that of all''. Of course, the plaintiff can sue for partition. ''if his possession of some part of the property is admitted or established:''[48] but, it is equally clear ''that if it is established that he is not in possession at all of any portion of the joint property, he must sue for recovery of possession and partition and pay *ad valorem* Court-fees upon plaint appropriately framed for the purpose''.[49]

120. (E) WHERE PLAINTIFF COPARCENER, OUT OF POSSESSION, SUES FOR JOINT POSSESSION OR ENJOYMENT, OF JOINT FAMILY PROPERTY—S. 7 (iv) (b).—This would be a typical case falling under S. 7, Cl. (*b*) of the Act, taking even the most narrow view of the terms ''enforcement of right to share'' in the sub-clause aforesaid. Where plaintiff is admittedly a co-owner, and as such in constructive possession of the whole of the joint family property, but his right to separate possession, which is denied by the defendant in actual possession

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(43) *Dip Chand* v. *Chhetru Lal*, 56 I.C. 570 (571)=1 P.L.T. 529.

(44) *Rachaya* v. *Mt. Chando*, 65 I.C. 294 (295).

(45) 58 I.C. 236=1921 Pat. 78.

(46) *Chanderlal* v. *Dina Nath*, 80 Judicial Record, Vol. I.

(47) No. 13, Judicial Record, Vol. II.

(48) *Kirty Churn* v. *Aunath Nath*, 8 Cal. 757=11 C.L.R. 95; and *Bidhata Rai* v. *Ram Chariter*, 12 C.W.N. 37=6 C.L.J. 651, cited in *Hamarayan* v. *Suresh*, 63 I.C. 203 (Pat.).

(49) *Dipchand* v. *Chhetru Lal*, 56 I.C. 570 (Pat.); followed in *Humarayan* v. *Suresh*, 63 I.C. 203 (Pat.); (*Held*, that in a suit for partition, plaintiff had to clear up his title, and possession over the plots recorded adversely to him in the survey records, and pay *ad valorem* Court-fee with respect to such property).

or management of the property, is sought to be enforced by the plaintiff, the claim involves something more than a mere change in the nature of the property, and the suit falls under S. 7 (iv) (*b*), according to the BOMBAY HIGH COURT, in *Motibhai* v. *Haridas*,[50] and the PUNJAB CHIEF COURT, in *Raghbardial* v. *Saligram*[1] and in *Harichand* v. *Jiwanmal*;[2] and the MADRAS FULL BENCH in *Rangiah* v. *Subramanias*[3] and the Nagpur case, of *Bhaddoo* v. *Saddoo*.[4] But, this sub-clause has been very narrowly interpreted by the BOMBAY HIGH COURT, in *Dagdu* v. *Tota Ram*[5] and by the JUDICIAL COMMISSIONER, N.-W.F.P., in *Chanderbal* v. *Dinnanath*,[6] to mean that it applies to abstract claim or right, in proper logical neighbourhood with the other clauses of the paragraph; and, that it is not intended to provide for separate possession, by partition, of joint family property. This construction seems to hold, that the expression "*right* to share" means "right to share, as joint sharer" and not "right to share, as separate sharer", a view dissented from by White, C.J., and Krishnaswamy Aiyar, J., in the MADRAS FULL BENCH CASE of *Rangiah* v. *Subramanias*.[7] However, even in this restricted sense, it becomes clear, that where a co-sharer in constructive possession, is being denied his right to joint enjoyment, or joint possession of his property, he can come in under S. 7 (iv) (6), for a declaration or enforcement of his right to share the property in suit, "on the ground that it is joint family property." This phrase means that the property belongs to the joint family on the date of the suit.[8] The possibility of such cases, where the co-parcener sues for joint possession, being within the scope of Cl. (iv) (*b*), was recognised by Krishnaswami Aiyar, J., though a doubt is thrown thereon by his *obiter dictum* that a co-parcener suing for joint possession may have to be treated on same footing with one suing for exclusive possession, both kinds of suits being suits for possession of property to which S. 7 (v) may apply.

121. VALUATION FOR COURT-FEE, IN PARTITION SUITS—Divergent views of High Courts.—In the preceding two Paragraphs 85 and 86, of the comments, the divergence of the views of different *High Courts*, has been pointed out, in suits relating to partition, as centering on two or three main considerations: namely, (1) whether the plaintiff, alleged co-sharer, is in possession, actual or constructive of his share in the property, for without this unity of title and possession, no suit for possession is

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(50) 22 Bom. 315 [f.-n. (41), *ante*].

(1) 104 P.R. 1895 [f.-n. (49), *ante*].

(2) 28 P.R. 1903, folld. in *Rabhi* v. *Khairan*, 1932 Lah. 421.

(3) 8 I.C. 512=21 M.L.J. 216 (F.B.).

(4) 1924 Nag. 86=I.C. 766 [f.-n. (40), *ante*]; followed in *Bhagwan Appa* v. *Shivalla Wani*, 1927 Nag. 248=101 I.C. 770=23 N.L.R. 73.

(5) 33 Bom. 658=4 I.C. 243 [f.-n. (27), *ante*].

(6) 80, Judicial Record, Vol. I [f.-n. (42), *ante*].

(7) 21 M.L.J. 21=9 M.L.T. 3=8 I.C. 512 (F.B.).

(8) *Rangiah* v. *Subramania*, 8 I.C. 512=21 M.L.J. 21=9 M.L.T. 3 (F.B.).

maintainable;[9] and, (2) whether the claim, in its essence, is merely seeking a change in the mode of enjoyment of joint property,[10] in which case no money-value is assessable for the relief, and a fixed fee is provided by the Act, under SCH. II, CL. (17) (6); or, whether the claim involves something more, in the shape of declaration, and enforcement, of right to share in joint family property, based on the theory of Hindu Law applicable to joint Hindu families;[11] in which case, the value not easily assessable by a money-standard is left to the option of the plaintiff, under S. 7 (iv), OF THE COURT-FEES ACT and, (3) whether in a so-called partition suit, where plaintiff is out of the possession, actual or constructive, of the alleged joint property, and his title to property as alleged co-owner, as also his right to possession, exclusive or joint, over a share, is being denied by the defendant; in which case, his suit is really a title suit in disguise, and has to be treated as a suit for ejectment, under S. 7 (v) of the COURT-FEES ACT.[12]

122. Much of the real, or apparent, divergence of views between the different High Courts, disappears when the above essential points are borne in mind in determining the value of suit for purposes of Court-fees. In this connection, attention may be drawn once more to the principle well established by the authorities, that primarily, it is the allegations of the plaintiff, and not the written statement, of the defendant, that determines the nature of the relief claimed.[13] But, this has to be taken along with the other principle, equally well established, that the Courts have the power to go behind the outward nature of the allegations in the plaint, to determine what, in its essence, is the real nature of the dispute between the parties.[14]

123. If Sch. II, Art. 17 (6) applies, no question of valuation arises, as the fee payable is a fixed amount under the schedule. If S. 7 (iv) (*b*), applies, the Court-fee is *ad valorem* on the value of plaintiff's share in the property,[15] as fixed by the plaintiff at his option.[16] It was held by the FULL BENCH OF THE MADRAS HIGH COURT in *Chelasami Ramiah* v. *Chelasami Ramasami*,[16] that a valuation made by a plaintiff of the relief sought by

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(9) 51 I.C. 77 (Pat.).

(10) *See* Para. 86, *ante*, "Suits by co-sharer in joint-possession".

(11) *See* Para. 89, *ante*, "Scope".

(12) *See* Para. 86 (F), and (G), *ante*.

(13) *See* Para. 55, (1), (2) and (3), *ante*.

(14) *See* Para. 55 (3), *ante; also see* Para. 86 (F),—Patna cases.

(15) *Balvant Ganesh* v. *Nana Chintaman*, 18 Bom. 209, folld. in *Motibai* v. *Haridas*, 22 Bom. 315; *Maung Shwe Ba* v. *Maung Po*, 35 I.C. 731 (L.B.); *Chelasami Ramiah* v. *Ramasami*, 18 I.C. 36 (F.B.) (Mad.); cf. *Ranjit Sahi* v. *Maulvi Qasim*, 72 I.C. 916=2 Pat. 432=1923 Pat. 342; and *Prankrishna* v. *Nitya Gopal*, 79 I.C. 333=50 Cal. 892=1924 Cal. 239; also see *Bhaddoo* v. *Saddoo*, 81 I.C. 766=1924 Nag. 86; and *Bhagwanappa* v. *Shivalla*, 1927 Nag. 248=101 I.C. 770; *Velu Goundan* v. *Kumaravelu*, 20 Mad. 289.

(16) *Chelasami Ramiah* v. *Chelasami Ramasami*, 18 I.C. 36 (F.B.) (Mad.); citing *Guruvajamma* v. *Venkatakrishnama*, 24 Mad. 34; and *Chinnamal* v. *Madarsa Rowther*, 27 Mad. 480=14 M.L.J. 343.

him in a suit for partition of properties, which he claims to be in joint possession of, along with his coparceners, cannot be rejected by the Court even if it is proved not to be a *bona fide* but an arbitrary valuation. The cases in ALLAHABAD,[17] BOMBAY[18] AND CALCUTTA,[19] are not in accordance with the decisions of the Madras High Court, on this point. These latter cases decide that the plaintiff is not entitled to fix arbitrarily the value of the relief claimed by him—a view which is hardly justified on the plain terms of the sub-cl. 4 (*b*) of S. 7 of the Court-Fees Act. It has been held, by the LOWER BURMA CHIEF COURT, also, that the plaint in such cases must be stamped according to the plaintiff's valuation of his share which he seeks to recover.[20] The NAGPUR COURT. Similarly holds that in cases falling under S. 7 (iv) (*b*), the amount of Court-fee payable is to be computed according to the amount at which the relief sought is valued in the plaint.[21] The same view is taken in the RANGOON HIGH COURT,[22] following the Madras[23] and Patna cases[24] and citing an Allahabad[25] case to the same effect.

124. COURT-FEE ON APPEALS IN PARTITION SUITS. —As regards Court-fee on appeals, against preliminary order, in a suit for possession by partition, it has been held by the Punjab Chief Court in *Bhagat Ram* v. *Gopal Chand*,[26] that *ad valorem* Court-fee was to be paid on defendant's appeal, according to the full value of the plaintiff's share. However, where the trial Court had directed the partition of certain property, which was alleged by the plaintiff to be *wakf*, and as such impartible, plaintiff was not required to pay *ad valorem* Court-fees on the value of his share of this property. This was on the ground that the decision of the lower Court amounted merely to a declaration that certain property is partible, and no decree for possession having been passed, the Court-fee stamp of Rs. 10 affixed on the memorandum of plaintiff's appeal was sufficient.[27]

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(17) *Zaqer Hussain* v. *Khurshed Jan*, 28 All. 545 (551)=3 A.L.J. 266; 1906 A.W.N. 99.

(18) *Dayaram* v. *Gordhan Das*, 31 Bom. 13 (77)=8 Bom. L.R. 885; cf. *Mothibai* v. *Haridas*, 22 Bom. 315.

(19) *Krishna Das* v. *Hari Churn*, 10 I.C. 865=14 C.L.J. 47=15 C.W.N. 823.

(20) *Maung Shwe Ba* v. *Maung Po*, 35 I.C. 731 (L.B.).

(21) *Bhaddoo* v. *Saddoo*, 81 I.C. 766=1924 Nag. 86; folld. in *Bhagwanappa* v. *Shivalla Wani*, 101 I.C. 770=1927 Nag. 248.

(22) *Ma Fatima* v. *Manni Bibi*, 118 I.C. 122=7 Rang. 104=1929 Rang. 211 (A suit by a Mahomedan co-heir for his share of inheritance); citing *Ranjit Sahi* v. *Mahomed Qasim*, 72 I.C. 916=2 Pat. 432=1923 Pat. 342; *Velu Goundan* v. *Kumaravelu*, 20 Mad. 289=7 M.L.J. 30.

(23) 20 Mad. 289=7 M.L.J. 30, *supra*.

(24) 2 Pat. 432=1923 Pat. 342=72 I.C. 916, *supra*.

(25) *Wajihuddin* v. *Waliullah*, 24 All. 381=(1902) A.W.N. 88.

(26) 150 P.R. 1908.

(27) *Rikhi Kesh* v. *Mela Ram*, 131 I.C. 283=1931 Lah. 170=32 P.L.R. 304.

125. DEFENDANTS' NON-LIABILITY TO PAY COURT-FEE.—It may be noted, that where in a suit for partition, the defendant is merely asking for his share, no Court-fee is necessary to enable the Court to order the defendant's share also to be separated. AS THE PUNJAB CHIEF COURT held in *Wasdeo* v. *Rupchand*,[28] a partition suit is of a peculiar nature, in so far as a decree in such a suit is or ought to be, a joint declaration of the rights of persons interested in the property of which partition is sought, and renders unnecessary any subsequent suit by *any* of such sharers for a declaration of his interest in the property, and each co-sharer is entitled to possession of the share allotted to him under the decree whether he be plaintiff or defendant. This has been followed in a later case, by the same Court,[29] where it was held that each co-sharer is entitled to obtain possession of his share under a decree for partition, whether he be plaintiff or defendant. The Punjab ruling is based on the authority of a Calcutta case, in *Sheikh Khurshed* v. *Nobbee Fatima*,[30] which held, that a partition decree, when *properly drawn up*, is in favour of each shareholder or set of shareholders having a distinct share. The important words are those italicized. In *Hikmatali* v. *Waliun-Nissa*,[31] the ALLAHABAD HIGH COURT, expressed an *obiter* questioning this decision, but in *Dost Muhammad* v. *Said Begam*,[32] the Court held that a partition decree is not in favour of the plaintiffs only, and is rather a decree in favour of each sharer, and the decision as to the shares of defendants *inter se* is *res judicata* between them, and cannot be raised in a subsequent suit. The question was elaborately examined by the PATNA HIGH COURT in *Hemchandra Mahto* v. *Prem Mahto*,[33] and, it was held, by Kulwant Sahai, J. that there is nothing in the law which requires a defendant in a partition suit to pay Court-fees in order to have his share separately allotted to him; he is merely to ask for it in his written statement, and it is open to the Court to order the shares of the defendants in a partition suit to be separated as amongst themselves." He pointed out, that "the decree that is finally drawn up in the partition suit has to be stamped as an instrument of partition under the Stamp Act and except the stamp duty levied on the decree, no other duty as Court-fee is payable by the defendants." Reference was made to the BOMBAY HIGH COURT ruling in *Nawab Mirsadruddin* v. *Nawab Nuruddin*,[34] distinguishing and not following the con-

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(28) 23 P.R. 1905=13 P.L.R. 1905—Per Clark, C.J. and Kensington, J.; following 20 All. 81; and citing 3 Cal. 551. P.W.R. 1918.

(29) *Debi Sahai* v. *Tarachand*, 44 I.C. 135=22 P.L.R. 1918=44 P. W.R. 1918.

(30) 3 Cal. 551.

(31) 12 All. 506.

(32) 20 All. 81.

(33) 90 I.C. 739=(1925) Pat. 330=1926 (A.I.R.) Pat. 154=7 P.L.T. 295.

(34) 29 Bom. 79=6 Bom. L.R. 834.

trary view taken in two other rulings of the Bombay High Court, which do not appear to be pure suits for partition.[35]

126. JURISDICTION: VALUATION OF SUITS, IN PARTITION CASES—Madras.—A suit for partition, falling within the sub-cl. 4 (*b*) of S. 7 of the Act, has the same value for jurisdictional purposes, as for Court-fee, (*vide* S. 8 of the Suits Valuation Act).[36] In *Chakrapani* v. *Narasingha*,[37] which was approved, and followed in 20 Mad. 89, the Madras Court had held that "when the suit relates to coparcenary property, unless it is one for general partition among all the shareholders, the specific and definite share claimed must be held to be the subject-matter of the suit as stated in the Suits Valuation Act, and the Madras Civil Courts Act." And the value of the same, as stated by the plaintiff, shall determine the Court's jurisdiction. The Full Bench, of the MADRAS HIGH COURT, in *Chelasami Ramiah* v. *Chelasami Ramasami*,[38] held that this valuation made by the plaintiff of the relief sought by him cannot be rejected by the Court, even if it is proved not to be a *bona fide* but an arbitrary valuation.

127. Allahabad, Bombay, Punjab and Sind.—The valuation in a suit for partition for the purpose of jurisdiction is not that of the entire property, but only of the share of the plaintiff in the said property, according to the ALLAHABAD HIGH COURT, in *Wahiuddin* v. *Waliullah*,[39] and the BOMBAY HIGH COURT, in *Moti Bhai* v. *Haridas*,[40] and *De Silva* v. *De Silva*.[41] The SIND JUDICIAL COMMISSIONER'S COURT, held in *Wadhumal* v. *Chellamal*[42] that the line of reasoning in the Bombay case was correct "that in a partition suit the whole estate was the *substratum* out of which the claim arose, and could, therefore, only be remotely described as the subject-matter; but that the claim itself was the immediate subject-matter; and this was generally, the specific thing sought in the suit." THE PUNJAB CHIEF COURT held, in *Khilanda Ram* v. *Nanda Ram*[43] that the suit had been "absurdly overvalued for jurisdiction purposes, at the assumed value of the whole estate, and the valuation should have been, in round figures, representing the plaintiff's alleged share." In the

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(35) Cf. *Abdul Kadar* v. *Bapubhai*, 23 Bom. 188; and *Murarrao* v. *Sitaram*, 23 Bom. 184.

(36) *Velu Gounden* v. *Kumaravelu*, 20 Mad. 289=7 M.L.J. 30; (Not following *Vydinath* v. *Subramania*, 8 Mad. 235; a case decided before the Suits Valuation Act, also *Khansa Bibi* v. *Syed Abba*, 11 Mad. 40; *Ramayya* v. *Subbarayadu*, 13 Mad. 25; and *Krishnasami* v. *Kanakasabai*, 14 Mad. 183, decided after the Suits Valuation Act, but without noticing that the law as contained in 8 Mad. 235 had been altered).

(37) 19 Mad. 56; approved in 20 Mad. 289..

(38) 18 I.C. 363 (F.B.).

(39) 24 All. 381.

(40) 22 Bom. 315.

(41) 6 Bom. L.R. 403; also *see Balwant Ganesh* v. *Nana Chintaman*, 18 Bom. 209; and *see* and *cf.* 8 Bom. 31.

(42) 19 I.C. 870 (follows 8 Bom. 31).

(43) 29 I.C. 766=108 P.L.R. 1915=68 P.W.R. 1915.

case of *Raghunath Prasad* v. *Syed Yahya*,[44] their Lordships of the Privy Council, in rejecting the application for leave to appeal held that the value of the suit was that of the share claimed by the plaintiffs, and not of the entire property, thus approving of the principle in the Bombay case of *De Silva* v. *De Silva*.[45]

128. Calcutta.—The Calcutta High Court has held in a number of cases that the value of the entire property in suit will govern jurisdiction. It was observed in *Kirty Churn* v. *Aunath*[46] that in a partition suit, the plaintiff is bound to pay *ad valorem Court-fee* upon the value of the share that he claims, but it has been held, by Chakravarti, J. in *Rajani Kant* v. *Raja Bala Dasi*[47] that the *jurisdiction* of the Court would be determined by the value of the entire property sought to be partitioned. Section 8 of the Suits Valuation Act, applies only to partition suits of a simple character, falling under Art. 17, Cl. (6) of the second schedule, but not to suits for partition where plaintiff had paid Court-fee *ad valorem* on the value of his share.

129. Nagpur.—In *Munji* v. *Sitaram*,[48] the Court held that a distinction had to be made in simple suits for partition, where a fixed Court-fee of Rs. 10 was payable, and suits for declaration of right to partition, which must be treated practically as ejectment suits.

130. Patna.—The Patna High Court, in *Dukbi Singh* v. *Harihar Shah*,[49] notes the conflict of opinions, and cites the Privy Council case of *Raghunath Prasad* v. *Syed Yahya*,[50] as approving of the principle decided, in the Bombay case of *De Silva* v. *De Silva* [1] But Kulwant Sahay, J., in *Ranjit Sahi* v. *Maulvi Qasim*,[2] distinguishes the Privy Council ruling, on the ground that there is a distinction between suits for partition pure and simple, and suits where the plaintiff seeks for an adjudication of his disputed title, or extent of share, and for partition after such adjudication. He holds that "when there is no question as regards the title of the plaintiffs, the only question before the Court being as regards partition, the value of the whole of the properties sought to be partitioned must be the value for the purposes of jurisdiction." Another argument is that a decree in partition suits is engrossed on a stamp-paper under Art. 45 of the Indian Stamp Act, the duty being paid on the value of all the shares separated, the value of plaintiff's share alone could not determine the jurisdiction of the Court.

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(44) 42 I.C. 966.

(45) 6 Bom. L.R. 403.

(46) 8 Cal. 757=11 C.L.R. 95.

(47) 52 Cal. 128=85 I.C. 870=1925 Cal. 320; also see *Bhugwai Sahay* v. *Pashupati*, 10 C.W.N. 564=3 C.L.J. 257; *Biraj Mohini* v. *Chintamani*, 3 C.L.J. 197=10 C.W.N. 565; and 4 C.L.J. 509.

(48) 81 I.C. 643=1924 Nag. 105; *also see* and *cf.* 106 I.C. 770=1927 Nag. 248.

(49) 58 I.C. 236=1921 Pat. 89=1 P.L.T. 595.

(50) 42 I.C. 966.

(1) 6 Bom. L.R. 403.

(2) 72 I.C. 916=2 Pat. 432=1923 Pat. 342.

S. 7 (iv) (c) *Declaratory decree, and consequential relief.*

Synopsis.

131. I. Scope of the sub-section.
132. II. Madras amendment.
133. III. Declaratory decree.
135. IV. Consequential relief.
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(viii) Benami transactions.
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(xx) Landlord and tenant—Suits between.
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VII. Suits not falling under this sub-clause.
VIII. Valuation of suits—
A. For Court-fee, at option of plaintiff.
B. For jurisdiction, same as for Court-fee.
C. Valuation in appeals.
D. Valuation under Madras Amendment.
E. Paragraph iv-A—(a) Scope and object; ibid.—(b) Application of.

Comments.

131. SCOPE OF THE SUB-CLAUSE.—This sub-clause enacts that in suits which are not for a mere declaration, but involve some consequential relief with the declaration sought, as an additional or ancillary remedy, thereto, the plaintiff has the right to value the relief sought, in the plaint or memorandum of appeal, for purposes of Court-fee payable under the Act. Where the prayer in the plaint as regards declaration embodies relief of a consequential nature, which will give full redress to the plaintiff, *ad valorem* Court-fees must be paid on the value of the reliefs which the plaintiff chooses to put on his plaint. But, as observed by Jenkins, C.J., in *Deokali Koer* v. *Kedar Nath*,[3] "it is a common fashion to attempt an evasion of Court-fees by casting the prayers of the plaint into a declaratory shape". "Where the evasion is successful, it cannot be touched, but the device does not merit encouragement or favour"[4] and the Courts call for *ad valorem* fee, under this sub-clause, instead of the fixed fee for declaratory suits merely, where the prayer in the plaint although worded as embodying reliefs which on the face of them appear to be of a declaratory nature, are really consequential ones.[5] Where the

(3) 15 I.C. 427=39 Cal. 704.
(4) *Ibid.*, 15 I.C. 427 (428)=39 Cal. 704.
(5) *Bidu Bhusan* v. *Kala Chand*, 1927 Cal. 775=106 I.C. 335=31 C.W.N. 1045.

plaint in a suit for declaration leaves no room for doubt that the prayer clause embodies a consequential relief, this clause will be applied, although the suit is framed in such a way as to make it bear the appearance of a suit for pure declaratory relief.[6] However, the view that the plaintiff cannot avoid paying the proper Court-fee as in a suit for declaration with consequential relief, by casting his reliefs in a declaratory form, was not agreed to by Das, J., in a Patna case.[7] It was observed that "the question of Court-fee must be decided on the plaint; and, though it is open to the Court to say that the plaintiff has really asked for a consequential relief though he has tried to conceal it by casting the reliefs in a particular form, it is not open to the Court to say that the plaintiff should have asked for a consequential relief and should have paid the proper fee as in such a suit." Accordingly, where the plaintiff insisted that it was not necessary for him to ask for a consequential relief, and he was prepared to accept the risk of his suit being dismissed under S. 42 of the Specific Relief Act, if the Court ultimately came to the conclusion that it was open to him to ask for a consequential relief, it was held that he was clearly entitled to have the case made by him in the plaint tried by the Courts, and the plaintiff could not be called upon to pay the fee as in a suit for a declaration of title and consequential relief.[8] It depends on the facts of each case whether it is incumbent on the plaintiff to seek for a consequential relief, and whether in fact, or in essence, such relief has been asked for, for the case to fall[9] under this sub-clause providing for *ad valorem* Court-fees.

132. MADRAS AMENDMENT.—The Madras Court-Fees Amendment Act, V of 1922, has amended this clause, by adding a proviso to the effect that *where the relief sought is with reference to any immoveable property,* such valuation shall not be less than half the value of the immoveable property calculated as in manner provided in Para. 5, containing provisions analogous to Arts. 2 and 4, Sch. I. This proviso curtails the privilege given to the plaintiff in cases falling under cl. (*c*), *i.e.*, suits to obtain a declaratory decree or order where consequential relief is prayed, by enacting a minimum value for such suits, which involve the possession of, immoveable property.

133. DECLARATORY DECREE.—Declaratory decrees are dealt with in Chap. VI of the SPECIFIC RELIEF ACT, 1877, S. 42 of that Act, provides as follows:—

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(6) *Tara Prasanna* v. *Nrisingha,* 1924 Cal. 731=51 Cal. 216=81 I.C. 763=39 C.L.J. 212=28 C.W.N. 683.

(7) *Narayan Singh* v. *Dildar Ali Khan,* 80 I.C. 544=3 Pat. 915.

(8) *Ibid.,* 80 I.C. 544=3 Pat. 915.

(9) *Umarannessa* v. *Jamirannessa,* 76 I.C. 448=1923 Cal. 362=37 C.L.J. 499; citing, *Aisa Siddika* v. *Bidhu Sekhar,* 18 I.C. 633=17 C.L.J. 30; and *Bakhtawar Singh* v. *Bhuban Singh,* 20 I.C. 322=17 C.L.J. 468; also see *Ram Kamal* v. *Syam Sunder,* 75 I.C. 41; (*Held,* that plaintiff cannot be compelled to ask for consequential relief: and the question whether plaintiff is able to seek further relief than a mere declaration of title, must depend on the circumstances of the particular case). For other cases, where the plaintiff has not sought further relief open to him, *see* Comments under Sch. II, Art. 17 (vi).

"Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief.

PROVIDED that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."

An explanation, and certain illustrations follow. The first mention in Indian Legislature of declaratory decrees, occurs in S. 15 of the Code of Civil Procedure, 1859, by which it was enacted as follows:—

"No suit shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for civil Courts to make binding declarations of right without granting consequential relief."

The decisions on this enactment are reviewed in *Kathama Natchiar* v. *Dorasinga*.[10] According to this authority, a declaratory decree could not be made, under S. 15 of the Civil Procedure Code, 1859, "unless there was a right to consequential relief capable of being had in the same Court, or in certain cases some other Court," *e.g.*, a Revenue Court.[11] The Code of 1859 was repealed by the Code of 1877, and the provision as to declaratory decrees transferred to S. 42 of the Specific Relief Act which was passed in the same year. Before the Specific Relief Act the Courts in India had no power to make a merely declaratory decree independently of S. 15 of the Code of Civil Procedure, 1859. The power to make such decrees rested entirely upon that section.[12] "The same reasoning applies with equal force to cases arising after the passing of the Specific Relief Act; that is to say, the power of Courts to make a decree merely declaratory since the passing of the Specific Relief Act rests entirely upon S. 42 of the Act, and the Courts have no power to make such a decree independently of that Section."[13] THE MADRAS HIGH COURT, has held in *Ramachandra* v. *The Secretary of State*[14] that a suit for declaration of right may not be within the purview of S. 42, and yet may be maintainable, and, in a Full Bench of Madras High Court, in *Kalyana Venkataramana* v. *Kasturi Ranga*[15] a suit by temple worshippers to declare permanent lease to Archakas invalid, was held maintainable, though the question whether it came within the provisions of S. 2, was not raised then. But the

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(10) (1875) L.R. 2 I.A. 169 (187-190).

(11) *Sadut Ali* v. *Abdool Gunney*, (1873) L.R. 1 I.A. Supp. 165 (171) =11 Beng. L.R. 203 (226, 227).

(12) (1875) L.R. 2 I.A. 169 (179-180), *supra*.

(13) Pollack and Mulla, Specific Relief Act, p. 845.

(14) (1916) 31 I.C. 310=39 Mad. 808; also see *Ramakrishna* v. *Narayana*, 39 Mad. 80=26 I.C. 883; (*Held*, that no suit, under S. 42, Specific Relief Act lies for a declaration that a valid personal contract still subsists between the parties); and see *Veeramachanani* v. *Soma Pitchayya*, (S. 42, Specific Relief Act, held not exhaustive), referring to *Robert Fischer* v. *Secretary of State*, 22 Mad. 270=26 I.A. 16 (P.C.); and *Kalyana* v. *Kasturi*, 40 Mad. 212=38 I.C. 73 (F.B.).

(15) 38 I.C. 73=40 Mad 212=31 M.L.J. 777=1917 M.W.N. 400 =40 M.L.J. 490.

Judicial Committee has observed, in *Sheoparsan Singh* v. *Ramnandan Singh*,[16] that "the Court's power to make a declaration without more is derived from S. 42 of the Specific Relief Act, and regard must therefore be had to its precise terms". Similarly, the HIGH COURT OF BOMBAY had held in *Vaktuba* v. *Agarsingji*[17] that "it has long been established that the general power vested in the Courts in India under the Civil Procedure Code to entertain all suits of a civil nature excepting suits of which the cognizance is barred by any enactment for the time being in force does not carry with it the general power of making declarations except in so far as such power is expressly conferred by statute." Commenting upon these cases arising in the mufassal, the learned commentators on S. 42, of the Specific Relief Act, remark that "whatever doubt there may be as to the power of the High Court to make a merely declaratory decree independently of S. 42, the Courts in the mufassal had no such power at any time."[18] The view expressed is, therefore, that S. 42, "is exhaustive of the cases in which a decree merely declaratory can be made, and that the Courts have no power to make such a decree independently of that section. At all events the proviso to S. 42 is paramount, and its effect cannot be avoided".[19] However, the LAHORE HIGH COURT, has held, in *Tulsi Das* v. *Shiv Dat*,[20] that the proviso to S. 42, Specific Relief Act does not operate so as to take away from a party against whom an order is made under O. XXI, R. 61, Civil Procedure Code, the special right to sue for a mere declaration of his title in so far as it is affected by the order which he seeks to impeach. Accordingly, a SUIT FOR MERE DECLARATION OF TITLE TO PROPERTY UNDER O. XXI, R. 63, would not fall under S. 7 (4) (*c*) of the Court-Fees Act, merely because the property has been sold, and is in the possession of the auction-purchaser. A Court-fee of Rs. 10 has been held sufficient in such cases,[21] as the proviso to S. 42, Specific Relief Act does not purport to take away the special right to sue for a declaration of title under O. XXI, R. 63, Civil Procedure Code.

134. THE CLASSES OF DECLARATORY SUITS.— Section 42 of the Specific Relief Act, and S. 7 (4) (*c*) of the Court-Fees Act, contemplate two distinct classes of declaratory

(16) (1916) L.R. 43 I.A. 91 (97)=43 Cal. 694=33 I.C. 914.

(17) (1910) 34 Bom. 676 (680)=7 I.C. 945; also see *Muhd. Fahimul Haq* v. *Jagal Ballow*, 74 I.C. 403=1923 Pat. 475.

(18) Pollock and Mulla, Specific Relief Act, p. 847.

(19) *Ibid.*, p. 847; citing *U Po Thein* v. *O. A. O. K. R. M Firm*, 5 Rang. 699=106 I.C. 368=1928 Rang. 34; *Thevar* v. *Samban*, 6 Rang. 188; 110 I.C. 595=1928 Rang. 143; cf. *Raja Udairaj Singh* v. *Secretary of State*, 46 All. 553=88 I.C. 212=1924 All. 652; also see *Natchiar* v. *Dorasing*, 2 I.A. 169=23 W.R. 314. *Held*, by the Privy Council, that no Court in India seems to have considered that it had the power of making declaratory decrees independently of that clause (S. 42, Specific Relief Act).

(20) 103 I.C. 763=9 Lah. 167=1927 Lah. 631.

(21) *Dhondu Sakharam* v. *Govind Babaji*, 9 Bom. 20; folld. in *Dayaram Jagjivan* v. *Gordhandas*, 31 Bom. 73=8 Bom. L.R. 885; and approved in *Phul Kumari* v. *Ghanshyam*, 35 Cal. 202=35 I.A. 22 (P.C.); also see *Kristnam* v. *Pathma*, 29 Mad. 151 (F.B.).

suits:—(1) SUITS FOR A DECLARATION PURE, AND SIMPLE, not combined with any other consequential, or further relief. This class of suits is provided for under Sch. II, Art. 17 (iii), with a fixed fee of Rs. 10, but several amending Acts of Local Legislatures have increased this amount,—*Vide* Art. 17 (iii),—Local Amendments. (2) SUITS FOR DECLARATION WITH CONSEQUENTIAL RELIEF, falling under this sub-cl. (iv) (*c*) of S. 7 of the Court-Fees Act. (3) It may be that a SUIT FOR DECLARATORY RELIEF, with or without a consequential relief, is COMBINED WITH A RELIEF FALLING UNDER SOME OTHER PARAGRAPH OF S. 7, *e.g.* a possessory suit falling under S. 7 (v). It must be noted that S. 42, Specific Relief Act does not sanction every form of declaration, but only a declaration that the plaintiff is entitled to any legal character, or to any right to any property.[22]

135. (A) CONSEQUENTIAL RELIEF—Meaning of the expression, "consequential relief," or "further relief."—The expression "consequential relief" means a substantial and immediate remedy in accordance with the title which the Court has been asked to declare.[23] The expression used in the proviso to S. 42, is "Further Relief", which has been held to refer to "the legal character or right as to any property which any person is entitled to, and whose title to such character or right any person denies, or is interested in denying."[24] The remedy by way of "Further relief," must, therefore, be one appropriate to, and consequent on the right, or title asserted.[25] The reasonable construction to be put on the expression "further relief," which S. 42 speaks of, is that it means "such relief as follows directly from the declaration sought for, and such as a plaintiff will be able to claim in an ordinary suit by virtue of the title sought to be declared."[26] To the same effect is the observation in a FULL BENCH RULING OF THE ALLAHABAD HIGH COURT *in Kalu Ram* v. *Babu Lal*.[27] "The expression 'consequential relief' in S. 7 (iv) (*c*) means some relief which would follow directly from the declaration given, the valuation of which is not capable of being definitely ascertained, and which is not specifically provided for anywhere in the Act, and cannot be claimed independently of the declaration as a substantive relief." The expression would not apply to any auxiliary equitable relief which it is in the option of the plaintiff to claim or not,[28] and which it is not necessary for

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(22) 15 I.C. 427=39 Cal. 704.

(23) *Hyder Ali* v. *Husain Raza*, 24 I.C. 316 (Mad.).

(24) *Fakir Chund* v. *Anunda*, 14 Cal. 586.

(25) *Kannan* v. *Krishnan*, 13 Mad. 324; *Erfan Mandal* v. *Samiruddin*, 15 I.C. 552 (553) (Cal.); *Narindra Bahadur* v. *Ram Singh*, 45 I.C. 859 =5 O.L.J. 133.

(26) *Sivaramalinga* v. *Sabharatna*, 51 I.C. 822 (824)=36 M.L.J. 624; following *Abdul Kadir* v. *Mahomed*, 15 Mad. 15; also see *Aisa Siddika* v. *Bidhu Sekar*, 18 I.C. 633 (Cal.).

(27) 1932 All. 485=139 I.C. 32=54 All. 812 (F.B.); (Suit for cancellation of an instrument under S. 39, Specific Relief Act, held not declaratory, but a substantive relief).

(28) *Kannan* v. *Krishnan*, 13 Mad. 324.

him to seek with a view to obtain the full redress claimed.[29] A general prayer for "any other relief," which does not convey a prayer for any substantive relief is not for a "consequential relief" within the meaning of the section.[30] Where there is a prayer for "such further or other relief as the nature of the case may require," it can only mean such further relief as is ancillary to the main specific relief claimed.[31] **The Test**, to be applied where two reliefs, one main, and the other ancillary, are sought in the plaint, in order to determine whether the second relief is consequential upon the first is to see "supposing the first relief is not granted does it follow that the plaintiff cannot obtain the second relief," then the converse, "supposing the first relief is granted, does it follow that the second relief will be granted."[32]

Illustration.

136. Where plaintiff sought for a declaration that he was a duly appointed member of a Managing Committee of a certain charitable trust, but he alleged no title to possession of the properties of the charity, and no prayer had been or could be inserted in the plaint for a declaration that the plaintiff was entitled to such possession, and a DECREE FOR FURTHER RELIEF WOULD NOT FOLLOW FROM THE DECLARATION SOUGHT FOR, *held* that the prayer for possession was not a "relief consequential" upon the declaratory decree.[33]

137. Where in a suit for declaration an *ad interim* injunction was granted on the application of the plaintiffs, and the suit having been dismissed, the plaintiff, in appeal, sought the relief claimed in the first Court, the case was held to fall under S. 7 (iv) (*c*), and the court-fee was levied *ad valorem* on the memorandum of appeal. The AD INTERIM PRAYER, it was observed, IS A SUBSTANTIAL PRAYER which makes the relief a consequential one.[34]

138. In a suit by the plaintiff claiming to be the reversionary heir of a deceased Hindu, challenging an alienation made by the widow of the deceased, and making various charges regarding alleged waste by her of the property of the deceased, the plaintiff's prayer for declaration that the alienation specifically mentioned in the plaint was not building upon him, was QUITE INDEPENDENT OF THE SECOND PRAYER for the appointment of a Receiver to take possession of the estate and to manage it during the lifetime of the widow; and that there was no necessary connection between the two reliefs.[35]

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(29) *Ramsumran* v. *Gobind Das*, 68 I.C. 700=2 Pat. 125=1922 (A) Pat. 615=3 P.L.T. 704 (S.B.).

(30) *Rachanna Subrao* v. *Shidanna*, 50 I.C. 280=1918 P.C. 188 (P.C.); *Gangadhar Misra* v. *Debendra Bala Dasi*, 94 I.C. 22 (24)=5 Pat. 211=1926 Pat. 249.

(31) *Isaac Brickles* v. *William Snell*, 38 I.C. 123 (P.C.).

(32) *Karupanna Thevar* v. *Angammal*, 96 I.C. 129=1926 Mad. 678=51 M.L.J. 67=23 L.W. 581; (*see* observations in Para. 98 (6) *post*, of the Comments).

(33) 24 I.C. 316 (Mad.); (*Hyder Ali* v. *Hussein Ali*).

(34) *Gangadhar Misra* v. *Debendra Bala Dasi*, 94 I.C. 22 (24)=5 Pat. 211=1926 Pat. 249.

(35) *Karuppa Thevar* v. *Angammal*, 96 I.C. 129=1926 Mad. 678; also see *Lakhmi Das* v. *Daropti*, 19 I.C. 859=93 P.R. 1913.

139. In a similar suit by a reversioner, on the death of a widow to recover possession of immoveable property of her husband from her donee, it is unnecessary for the plaintiff to seek a declaration that the gift is not binding on him. Accordingly, even if such AN UNNECESSARY DECLARATION is asked for, the suit should not be treated as one falling under S. 7 (iv) (*c*); and the prayer for declaration would be a mere surplusage, and a subterfuge to avoid payment of proper Court-fee under S. 7 (v) of the Court-Fees Act.[36]

140. Where the plaintiff claims relief to which he is not entitled until some decree or alienation of property which stands in his way has been avoided, or until his legal character, or title which has been called in question, has been declared by a decree of the Court, it has generally been held that such a suit comes under Cl. (iv) (*c*) of the section, even though the DECLARATION WHICH IT IS NECESSARY FOR HIM TO OBTAIN BEFORE THE FURTHER RELIEF CAN BE GRANTED has not been in terms asked for in the plaint.[37]

141. In a suit for declaration that the plaintiffs were occupancy tenants, and not tenure holders, and that the survey entry describing them as tenure-holders was *wrong*, the further prayer that the entry was *not binding* on them, was not a prayer for a consequential relief, but MERELY REDUNDANT. "If the entry was correct, it would most certainly be binding on him, and if incorrect, it would certainly not be binding on him"; and hence, it was a mere surplusage.[38]

142. In proceedings for the appointment of a guardian for a minor, the plaintiff had been appointed the receiver and put in possession of the minor's properties. That order was subsequently set aside by the High Court and an order passed directing the plaintiff to redeliver the properties to the minor's mother. By that time the minor died and before the order for redelivery was given effect to, the plaintiff sued for a declaration of his right to the property as the next in the order of succession to the last male owner. It was objected that the plaintiff ought to have prayed for possession as well but it was held that the suit for a mere declaration was maintainable. The property was really in *custodia legis*, in the hands of an officer of Court who happened by an accident to be the plaintiff in the present suit. The defendant was not in possession and the defendant could not, as against her, claim an order for redelivery. Nothing more was required to be done to secure to the plaintiff all his rights than the revocation of the order directing redelivery of the property to the defendant. It was therefore held that the suit was not open to the objection

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(36) *Ramsumran* v. *Gobind Das*, 2 Pat. 125=68 I.C. 700=1922 (A) Pat. 615=3 P.L.T. 704 (S.B.). (The Court observed that "a practice appears to have spring up in the subordinate Courts of this Province, and possibly in other Provinces, of claiming declarations in cases where such relief is altogether unnecessary". This practice frequently gives rise to frequent complications).

(37) 2 Pat. 125=68 I.C. 700=1922 Pat. 615 (S.B.).

(38) *Tewari Kora* v. *Bhupat Mandar*, 50 I.C. 298=4 P.L.J. 302.

on the ground that nothing more than a mere declaration of the plaintiff's right was asked for.[39]

143. Where the plaintiff prays for a declaration, and for confirmation of possession, which technically includes a prayer for recovery of possession if the Court thinks that the plaintiff is out of possession, the case falls under S. 7 (iv) (*c*), although it may be often unnecessary to ask for this prayer, which is generally added as an useful precaution against failure to prove plaintiff's alleged possession up to the date of suit.[40]

144. (B) Necessity for consequential relief is dependent on the facts of each case.—It has been held by the Calcutta High Court, in *Umarunnessa* v. *Janurannessa*,[41] that the question whether the plaintiff must ask for a consequential relief in a suit for declaration, depends upon the circumstances of each particular case. When the plaintiff merely throws in redundent words in his prayer for relief, it is severe upon him to say that he is asking for a consequential relief.[42] When a declaration of right is all that the plaintiff really requires to give him full redress, the prayer for consequential relief, even though mentioned, will be treated as a mere surplusage.[43] When the declaration sought will not give full redress to the plaintiff, a consequential relief is necessary.[44] Similarly where plaintiff is not entitled to immediate possession,[45] or is merely wanting a declaration of title as co-owner,[46] or a declaration that defendant is benamidar,[47] consequential relief is unnecessary. The plaintiff cannot be compelled to ask for any relief merely because the same could be granted to him, if he so insisted, nor can he be debarred from obtaining the relief prayed for, merely because he does not seek for other reliefs which he may not want.[48] Where the Court is unable to grant a necessary consequential relief, which is not expressly or impliedly asked for as a substantial relief, the Court can call upon the plaintiff to

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(39) 27 Mad. 591 (503); *also see* 10 I.C. 531; and 35 I.C. 17.

(40) *Ram Sekhar* v. *Sheonandan*, 68 I.C. 316=1922 Pat. 337; citing *Bobrunnessa* v. *Kurreemoon*, 19 W.R. 18; *Jhuman Kamti* v. *Debuhal Singh*, 16 I.C. 998=22 C.L.J. 415; and *Dinanath* v. *Ramnath*, 34 I.C. 702=23 C.L.J. 561.

(41) 37 C.L.J. 449.

(42) *Tewary Kora* v. *Bhupat Mander*, 50 I.C. 298; also see *Mahabir Prasad* v. *Shyam Behari*, 3 Pat. 799; *Murra Hyder Ali* v. *Hussein Raza*, 24 I.C. 316; *Kattia Pillai* v. *Ramaswamy*, 56 M.L.J. 394; 119 I.C. 35=1929 Mad. 396.

(43) *Vedanayaga Mudaliar* v. *Vedamal*, 27 Mad. 591 (593); *Chintamoni* v. *Tarak Chand*, 35 I.C. 17; *Malayiyya Pillai* v. *Perumal Pillai*, 12 I.C. 170=36 Mad. 62.

(44) *Mahabir Prasad* v. *Shyam Behari*, 3 Pat. 795=1925 Pat. 44=80 I.C. 655.

(45) 51 I.C. 822=36 M.L.J. 624=9 L.W. 357.

(46) 23 C.L.J. 592.

(47) 76 I.C. 448=1923 Cal. 362=37 C.L.J. 499.

(48) 25 Cal. 49=2 C.W.N. 76; *Ramkamal* v. *Shyam Sundar*, 75 I.C. 41; and *Ram Sundar* v. *Mathra Mohan*, 80 I.C. 2.

amend his plaint,[49] but where the plaint is not amended, or the proper Court-fee is not paid, the Court may refuse to grant the relief prayed for, or the consequential relief,[50] or may even dismiss the suit.[1] But, the Court cannot compel payment of Court-fee on the basis of the consequential relief being implied in the claim,[2] nor can it refuse to hear the suit as framed, unless the claim is liable to dismissal by reason of the bar under the proviso to S. 42 of the Specific Relief Act.[3]

Illustration.

145. ON THE DATE OF SUIT, THE PLAINTIFF WAS IN POSSESSION OF THE PROPERTY in suit, under an order of the Magistrate under S. 146, Criminal Procedure Code, but this order was set aside by the High Court which directed possession to be delivered to defendant. Before defendant could obtain possession, plaintiff brought a suit for declaration of his title. *Held*, that the plaintiff though bound to deliver possession to the defendant, had not yet delivered possession to him when the suit was instituted, and he was entitled to sue for a declaration of title to the property without joining a prayer for possession.[4]

146. The plaintiff, one of the trustees of a temple, was suspended conditionally from the trusteeship. The trustees held possession of its properties by rotation, and PLAINTIFF WAS NOT ENTITLED TO POSSESSION AT DATE OF SUIT, and did not require a possessory relief, but, he sued for a declaration that the order of suspension was invalid, and also for an injunction restraining future interference with his duties of the office, and for damages caused by defendant's obstruction. It was held that that the only consequential relief incidental to and flowing out of the declaration had been asked for, and no further relief was necessary.[5]

147. A plaintiff who admits that he is OUT OF POSSESSION cannot sue for a mere declaration and injunction.[6] Similarly, where the defendant was substantially in possession of an office, and its emoluments, held that a suit for declaration and injunction could not give full relief to the plaintiff, and plaintiff was permitted to amend the plaint by adding a prayer for possession on payment of additional stamp duty.[7] Likewise, where a trustee of a temple, who had been ousted from possession by his co-trustees, sued for a declaration that his dismissal from the trusteeship was invalid, and for an injunction restraining his co-trustees

(49) *Bua Ditta* v. *Ladha Mal*, 54 I.C. 833; *Sharandas* v. *Jamna Devi*, 1929 Lah. 811.

(50) *Sonachala* v. *Manika*, 8 Mad. 516.

(1) *Nanah Chand* v. *Jivanmal*, 25 I.C. 435; *Ma Shwe Yu* v. *Maung Sok Kyew*, 32 I.C. 564; In the matter of *Kalipada Mukerji*, 1930 Cal. 686 =58 Cal. 281.

(2) *Narayansingh* v. *Dildar Ali*, 80 I.C. 544=3 Pat. 915=1925 Pat. 210.

(3) *Ibid.*, 3 Pat. 915; *also see* 1931 All. 369; and 1932 All. 316, (*Mohamad Ismail* v. *Liaqat*).

(4) *Malaiyya Pillai* v. *Aperumal Pillai*, 12 I.C. 170=36 Mad. 62.

(5) *Sivaramalinga* v. *Subharatna*, 51 I.C. 822=36 M.L.J. 624=9 L.W. 357=1919 M.W.N. 216=25 M.L.T. 361.

(6) 4 I.C. 1131=5 M.L.T. 224, (*Devasikamani* v. *Subbiah*).

(7) 15 Mad. 15, (*Abdul Kadar* v. *Mahomed*).

and the Temple Committee from interfering with the exercise of his rights as trustee, the suit was not maintainable without a prayer for consequential relief in the nature of possession against his co-trustees.[8]

148. A plaintiff sued merely FOR CANCELLATION AND DELIVERY OF A WILL, asking for decree declaring that the Will is a forgery, and void against him. It was held that ordinarily where a plaintiff is out of possession, and he is in a position to claim a decree for possession, he should not be permitted to obtain merely a decree for the cancellation of an instrument according to which, if genuine, he has no title to the land.[9] Where a suit was instituted for a declaration that a Will set up by the defendants was a forgery, and could not prevail against plaintiff's title, and for cancellation of the Will and of the registration, it was held that the prayers relating to cancellation of the Will, and of the registration were unnecessary and superfluous and must be discarded.[10]

149. A person is precluded from bringing a suit merely for declaration of his title without seeking to recover possession, if an ORDER UNDER S. 59 OF THE LAND REGISTRATION ACT (Bengal Act VII of 1876), is made against him, even though he may be in physical possession.[11]

150. A plaintiff obtained a personal decree against defendant No. 1. In execution of the decree plaintiff discovered that defendant's share in certain joint family property had been diminished by means of certain fictitious, and collusive transactions. Plaintiff sued for declaration that those transactions were void, and of no effect, and asked for a further declaration that he was entitled to realise his decree from the estate of all the defendants. It was held that the FIRST DECLARATION WAS SUFFICIENT TO GIVE FULL RELIEF to the plaintiff, and THE PRAYER FOR SECOND DECLARATION WAS A MERE SURPLUSAGE.[12]

151. A SUIT TO DECLARE THAT A DECREE IS FRAUDULENT AND VOID, will not lie unless followed up by a prayer for consequential relief, such as an injunction restraining the decree-holder from executing the decree.[13]

152. WHERE JOINT PROPERTY HAS BEEN PURCHASED BY A STRANGER, a co-sharer cannot maintain a suit for mere declaration

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(8) *Rathnasabapathi Pillai* v. *Ramasami Aiyar*, 33 Mad. 452=5 I.C. 630=20 M.L.J. 306=1910 M.W.N. 112.

(9) *Shanker Lal* v. *Sarup Lal*, 34 A. 140=13 I.C. 19=8 A.L.J. 1297; also see *Suryanarayana* v. *Tammanna*, 25 Mad. 504, (Suit for declaration of invalidity of Will favouring defendant, on the ground that it bequeathed family property, not maintainable without claim for partition of property, though in occupation of lessees).

(10) *Kalia Pillai* v. *Ramaswami*, 119 I.C. 35=1929 Mad. 396.

(11) *Raj Narain Das* v. *Sham Nanda*, 26 Cal. 845 (Registration settles actual possession).

(12) *Mahabir Prasad* v. *Shyam Behari*, 3 Pat. 795=80 I.C. 655=1925 Pat. 44=6 P.L.T. 82.

(13) *Ramanadhan* v. *Annamalai*, 29 Mad. 132; *also see* 8 C.L.J. 485, to the same effect and *Brua Ditta* v. *Ladhamal*, 54 I.C. 833 (Lah.) (2).

of his title, as he is entitled, by way of further relief, to sue for partition and recovery of his share of the property purchased.[14] Similarly, where the suit is to set aside an alienation of trust property by a beneficiary, a suit for recovery of the property is clearly available to the plaintiff, and a suit for mere declaration will not lie.[15] Similarly, where the plaintiff asked (1) for a declaration that a certain *Wakfnamah* was invalid and that the defendant had not acquired any valid title as *Mutwalli* under that document, or (2) that if the *Wakfnamah* be valid, then the defendant had not been legally appointed *Mutwalli*, the plaintiff was able to seek further relief for recovery of possession, or for the removal of the defendant, and the appointment of a trustee duly appointed, and having failed to do so, the suit for declaration, without consequential relief, was not maintainable.[16]

153. *A* made a will in favour of his wife *B* of some immovable property for her maintenance, and after her death the property was to be inherited by his grandsons. He subsequently, by another will conferred upon *B* the right of alienating the property. *B* gifted the property to her son who sold it away to *H*. The grandson brought a SUIT FOR DECLARATION THAT THE GIFT AND THE SALE WERE NULL AND VOID as the second will was invalid for *A* was a member of a joint family. It was held that as *B* was living, a suit for possession was not tenable and *further* that as *A* was dead, the will challenged had lost its ambulatory character, and had become operative, and that consequential relief in the shape of the cancellation of the will must be asked for, and court-fee on that relief must be paid.[17]

154. It is not within the province of the Court to see whether the suit is properly framed by including the consequential relief to which he is entitled, and should have paid the proper fee as in such a suit;[18] nor what would be the effect if the plaintiff succeeds in obtaining the declaration as prayed for;[19] or its consequences, if he omits the necessary consequential relief.[20] All that it can hold is that the prayer for consequential relief though not expressely mentioned in the plaint, is really implied, or involved

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(14) *Ganapaty Venkatarayudu* v. *Butchu*, 5 I.C. 921=7 M.L.T. 164 =20 M.L.J. 759.

(15) *Muhammad Fahimal Haq* v. *Jagat Ballav Ghosh*, 74 I.C. 403= 2 Pat. 391=1923 Pat. 475; citing *Deokali Koer* v. *Kedar Nath*,—Per Jenkins, C.J., as to the scope of S. 42, Specific Relief Act.

(16) 15 I.C. 552 (Cal.), (*Erfan Mandal* v. *Samiruddin*).

(17) *Charandas* v. *Jamna Devi*, 1929 Lah. 811=10 Lah. 403=112 I.C. 48=10 L.L.J. 562=30 P.L.R. 672.

(18) *Deokali Koer* v. *Kedar Nath*, 15 I.C. 427—39 Cal. 704; (Where the decree of declaratory suit merely, is successful, it cannot be touched); *Kunj Behari* v. *Keshavlal Hiralal*, 28 Bom. 567, (If a plaintiff can evade, he may); *Idol Sri Gokul Nath, J.* v. *The New Birbhun Coal Co.*, 80 I.C. 589=27 C.W.N. 927; and *Narayan Singh* v. *Dildar Khan*, 80 I.C. 544= 3 Pat. 915=1925 Pat. 210, (Plaintiff taking risk of dismissal of suit under S. 42, Specific Relief Act).

(19) *See* 80 I.C. 589=27 C.W.N. 927, above.

(20) 80 I.C. 544=3 Pat. 915=1925 Pat. 210, above.

in the pleadings,[21] and must be valued accordingly, and court-fee paid *ad valorem* under S. 7 (iv) (*c*), of the Court-Fees Act.[22]

155. PLEADINGS IN SUIT—Construction of. (A) Applicability of clause (iv) (c).—It has been observed, by the MADRAS HIGH COURT, in *Chingachan Vital Sankaran Nair* v. *Chingacham Vital Gopal Menon*,[23] that the question whether S. 7, Cl. (iv) (*c*), of the Court-Fees Act, applies or not MUST DEPEND ON THE SUBSTANCE OF THE CLAIM, AND NOT ON THE MERE WORDS which a paintiff may choose to introduce into his plaint with reference to it; and, though the suit in question was held to be a merely declaratory suit not involving consequential relief, the Court at the same time expressed the opinion that where it was incumbent on the plaintiff to get the document set aside before he could question it, it must be treated as involving a prayer for consequential relief, and the provisions of S. 7 (iv) (*c*) would be applicable. This was followed in *Malikka Meladathil* v. *Kunji Achammil*,[24] where it was held that though only a declaration was asked for, the suit was in substance a suit for the cancellation of a deed, and *ad valorem* fee must be paid. "The statement in the judgment that an *ad valorem* fee was payable does not mean that Cl. (iv) (*c*) was not applicable, because the fee payable in suits falling under this clause is *ad valorem*, though under the provisions of the section it is computed according to the amount at which the relief sought is valued in the plaint."[25] A decision of CALCUTTA HIGH COURT, *Harihar Prasad Singh* v. *Shyam Lal Singh* is to the same effect,[26] that a "suit for a declaration" that a decree was forged, fraudulent, illusory, collusive, inoperative and unfit for execution," and further praying that the family property valued at a certain figure should be declared to be not liable to be sold in execution of this decree, was a suit for declaration with consequential relief coming under S. 7 (iv) (*c*) of the Court-Fees Act. Following these authorities, the Madras Full Bench, in *Arunachellam Chetty* v. *Rangaswamy Pillai*,[27] was opinion that a suit of the nature indicated in the reference, *viz.*, a suit for a declaration that an instrument of mortgage or sale executed by the plaintiff, or a decree that has been passed against the plaintiff for a debt is not binding on him, "which merely asks for a declaration, is nonetheless a suit for a declaration with consequential relief within the meaning of Cl. (iv) (*c*)". THE LAHORE HIGH COURT has held, in *Sri Krishen Das* v. *Sat Narain*, that the substance and not the language of the plaint is to be looked at when deciding

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(21) See *Instances*, where consequential relief are implied or involved, Para. , *post*, 56 I.C. 363; 71 I.C. 31; 1929 Lah. 463; 1932 Lah. 132; 1928 Nag. 343, (316); 1929 Nag. 71; etc.

(22) See *Valuation for Court-fees* and *Jurisdiction*.

(23) 30 Mad. 18=1 M.L.T. 412; folld. in *Arunachellam* v. *Rangasamy*, 28 I.C. 79=38 Mad. 922 (F.B.).

(24) 5 I.C. 927=7 M.L.T. 177.

(25) *Arunachellam Chetty* v. *Rangasamy Pillai*, 28 I.C. 79=38 Mad. 922 (F.B.).

(26) 21 I.C. 404=40 Cal. 615.

(27) 28 I.C. 79=38 Mad. 922 (F.B.); (folld. in 1932 Lah. 132).

whether a case falls within the ambit of S. 77 (iv) (*c*). Where a minor in a joint Hindu family on attaining majority attacks a mortgage executed by his father during his minority, on the ground of fraud, etc., and asks for a declaration that the decree for those reasons is not binding or him, the setting aside of the decree being a natural result amounts to consequential relief, and the suit falls within the ambit of S. 7, Cl. (iv) (*c*).[28] To the same effect, is a ruling of the PATNA HIGH COURT in *Logan Burt Kuer* v. *Khakhan Singh*[29] where it was held, in order to succeed in a suit for possession, it is necessary for the plaintiff to obtain a declaration that a document or decree is void or inoperative, the Court-fee to be paid must be calculated on the actual value of the property. "THE TEST in these cases is whether it is possible for the suit for possession to proceed without a declaration to the effect that a document or decree which is a bar to the plaintiff's possession is void, or inoperative and must be set aside". The Court observed, that a plaintiff has no doubt a second line of attack, for which it is not necessary that this declaration be made before the suit can proceed.[30] Again, in another Madras case, *Venkata Siva Row* v. *Venkata Narasimha*,[31] it was held that in a suit for declaration, where possession is also asked for, the suit for possession having been specifically provided for by S. 7 (v), of the Act, the suit has to be valued accordingly, and Court-fee paid under the provisions of that sub-section. Reference was made to *Rajagopala* v. *Vijiaraghava*[32] where in a similar case of a suit for declaration that a certain decree had no effect against the plaintiffs, *and* for possession of some property which had been sold in execution of that decree, the Court held that S. 7 (iv) (*c*) could not regulate the valuation of the whole suit, since part of the claim related to possession, which had to be dealt with in accordance with S. 7 (v), of the Act. The Full Bench ruling[33] above referred to, had similarly held, that "A SUIT IN WHICH THE PLAINTIFF IN TERMS PRAYS FOR A DECLARATORY DECREE AND CONSEQUENTIAL RELIEF *prima facie* comes within Cl. (iv) (*c*), but, if at the same time it comes within any of the other classes of suits specified in the section, it must be treated as a suit of that description and dealt

(28) 1932 Lah. 132: follows; 38 Mad. 922; also see *Hakim Rai* v. *Ishar Das*, 102 I.C. 46=8 Lah. 531=1927 Lah. 499; *Bindraban* v. *P. N. Bank*, 1929 Lah. 483.

(29) 43 I.C. 962=3 P.L.J. 92.

(30) *Ibid.*, 43 I.C. 962; [In this connection, see *Kattiya Pillai* v. *Ramaswami Pillai*, 1929 Mad. 396=119 I.C. 35=56 M.L.J. 394]; also see *Deoraj* v. *Kunj Behari*, 1930 Oudh 104. *Held*, that where it was necessary to get a declaration about the decrees not being binding on the plaintiff, before he could be entitled to a decree for possession, the relief for possession was undoubtedly a consequential relief and the Court-fee in the case was to be *ad valorem* on the valuation put by plaintiff in the plaint, or memorandum of appeal.

(31) 1932 Mad. 605=139 I.C. 317, (refers to *Chinnammal* v. *Madarsa Rowther*, 27 Mad. 480; and *Rajagopala* v. *Vijiaraghava*, 1915 Mad. 550=38 Mad. 1184, and follows *Arunachellam* v. *Rangaswami*, 28 I.C. 79=38 Mad. 922 (F.B.).

(32) 1915 Mad. 550=38 Mad. 1184, *supra*.

(33) 28 I.C. 79=38 Mad. 922 (F.B.).

with accordingly.'' Apart from the authority of the Full Bench in the case quoted, it is clear ''that in such an Act as the Court-Fees Act, IF THERE IS A SPECIAL PROVISION WHICH APPLIES TO A PARTICULAR CASE, then that special provision must be applied rather than some general classification, in which the suit may also be included, which may be more favourable to the plaintiff.''[34] The Oudh Judicial Commissioner's Court has held, in *Deoraj* v. *Kunj Behari*[35] that when relief for possession is consequential relief, and the principal relief is declaration, Court-fee is to be paid on the valuation put in the plaint. The principles governing suits when possession as well as a declaration is asked were clearly stated.

156. Another illustration of the principle that ''in deciding what the proper Court-fee payable is, the Court must have regard to the substance of the thing, and not to the mere form in which the relief has been prayed for'', is to be found in *Kattiya Pillai* v. *Ramaswamy Pillai*,[36] where in a suit instituted for a declaration that a will set up by the defendants was a forgery and could not prevail against a previous will in the plaintiff's favour and for cancellation of the will and of the registration, it was held, by the Madras High Court, (1), that the PRAYERS RELATING TO THE CANCELLATION OF THE WILL, AND OF THE REGISTRATION WERE UNNECESSARY and superfluous and must be discarded, and (2), that the case was governed neither by S. 7 (iv) A, or (iv) (*c*), of the Court-Fees Act, but by Sch. II, Art. 17-A (1), as a suit to obtain a declaratory relief where no consequential relief was prayed. WHERE A PRAYER FOR CONSEQUENTIAL RELIEF IS MEANINGLESS, as not arising on the pleadings,[37] OR IS REDUNDANT,[38] OR IS VAGUE AND INDEFINITE, the suit is not one for declaration *with* consequential relief.

157. Conversely, where the consequential relief is the substantial relief, and the declaratory relief is a blind, the consequential relief has to be taken separately. In *Rajagopala Naidu* v. *Vijiaragavalu*,[39] where the plaintiff sued for (1) a declaration that a certain decree was of no legal effect against them, or the various properties in their hands, and (2) possession of part of those properties which had been sold in execution of the decree, the High Court of Madras held that the two prayers could not be regarded separately, as they were so connected and possession was not asked for on any other ground than that the decree in execution of which it was lost, should be declared invalid; and it

(34) *Venkatasiva Rao* v. *Venkatanarasimha*, 1932 Mad. 605=139 I.C. 317=63 M.L.J. 764=36 M.L.W. 225=1932 M.W.N. 992.

(35) 1930 Oudh 104, (refers to *Awardhraj Singh* v. *Dharmraji Kuar*, 1929 Oudh 419; and *Sarju* v. *Sheoraj*, 1926 Oudh 380; cf. *Tula Ram* v. *Dwarka Das*, 1928 All. 248=50 All. 610.

(36) 119 I.C. 35=1929 Mad. 396=56 M.L.J. 394=29 M.L.W. 584 =1929 M.W.N. 286.

(37) *Rachappa* v. *Sidappa*, 24 C.W.N. 33; *Murza Hyder Ali* v. *Syed Hussein*, 24 I.C. 316.

(38) *Mahabir Prasad* v. *Shyam Behari*, 3 Pat. 795=1925 Pat. 47.

(39) 25 I.C. 683 (Mad.).

was only consequential upon the declaration. Where the facts disclosed require a consequential relief to be prayed for, but the same is not expressly mentioned, though it is implied, and involved in the claim, the suit in form of mere declaration will be held to be a suit falling within S. 7 (iv) (c) as a suit for declaration with consequential relief.[40]

158. Where the reversioners of a deceased Hindu sued, during the lifetime of his widow, for a declaration that a deed of gift executed by the deceased in favour of his wife's brother was "illegal, null and void", as it was executed under fraud, coercion and undue influence, it was held by PATNA HIGH COURT,[41] that the suit was really one for cancellation of the deed of gift, and, therefore, fell within S. 7 (iv) (c) of Court-Fees Act, and the Court-fee payable on the plaint was *ad valorem*. Reliance was placed on the Madras decision in *Samiya Mavali* v. *Minammal*,[42] where the suit was to set aside a deed of sale executed by the plaintiff himself on the ground of fraud, collusion, undue influence, and want of consideration and the Court applied S. 7 (iv) (c) to the case and on the FULL BENCH ruling of the Madras High Court in *Arunachellam* v. *Rangaswami*.[43] The decision in *Parvatibai* v. *Viswanath Ganesh*,[44] was also noticed. There the plaintiffs sued for cancellation of a sale-deed, and the prayer in the plaint was for a declaration that the sale-deed was fraudulent and for an order to have it cancelled and a copy sent to the Sub-Registrar as provided by S. 39 of the Specific Relief Act. It was held by Sir Lawrence Jenkins, C.J., and Batchelor, J., that the suit was one for declaration with a prayer for consequential relief, and the case fell under S. 7 (iv) (c) of the Act. The same view had been taken by the PATNA HIGH COURT in an earlier case.[45] There the suit was to avoid a registered deed of gift executed by the plaintiff herself on the ground of misrepresentation. It was held that the suit was one under Ch. V, Specific Relief Act, and the decisions in *Parvati* v. *Vishwanath Ganesh*[46] and other cases were followed, and it was held that *ad valorem* Court-fee was payable, ("upon the value to be stated by the plaintiffs").[47]

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(40) *Gangadhar* v. *Ram Debendra Wallah*, 5 Pat. 211=1926 Pat. 249 =94 I.C. 22; also see *Deokali* v. *Kedarnath*, 19 I.C. 391=39 Cal. 704= 17 C.W.N. 622; *Hukam Singh* v. *Gyan Devi*, 36 I.C. 95=87 P.R. 1916; also see *Charandas* v. *Jamna Devi*, 10 Lah. 403, (Suit for cancellation of Will after it loses its ambulatory character, and becomes operative); *Ngachitwet* v. *Kwanan*, (U.B.), 33 I.C. 624=11 U.B.R. 102, (Suit for cancellation of document executed by plaintiff: *ad valorem* fee); and *Babu Rao* v. *Balaji*, 1929 Nag. 71, (Suit for declaration that a registered document does not affect plaintiff's title, is a suit for consequential relief).

(41) *Kamla Prasad* v. *Jagarnath Prasad*, 1931 Pat. 78=10 Pat. 432= 130 I.C. 46.

(42) 23 Mad. 490=10 M.L.J. 240; also see *Arunachalam Chetty* v. *Rangaswami*, 28 I.C. 79=38 Mad. 922=28 M.L.J. 118 (F.B.).

(43) 38 M. 922 (F.B.).

(44) 29 Bom. 207.

(45) *Noowoogar Ojain* v. *Shridhar Jha*, 45 I.C. 238=3 P.L.J. 194.

(46) 29 Bom. 207.

(47) 130 I.C. 46 (48)=10 Pat. 432=1931 Pat. 78; also see *Deoraj* v. *Kunj Behari*, 1930 Oudh 104.

159. The RANGOON HIGH COURT, in *Maung Shein* v. *Ma Lon Ton*,[48] has similarly held, (1) "that S. 7 (iv) (*c*), is applicable to a suit in which, having regard to the substance of the plaint, it is incumbent upon the plaintiff to obtain a declaratory decree or order to perfect his right to the consequential relief that he claims; for instance, where the plaintiff seeks relief to which he is not entitled unless and until some decree, or document, or alienation of property is avoided a suit in which a declaration in that behalf, is claimed is within S. (iv) (*c*)":[48] and (2) "if the plaintiff elects to claim a declaratory decree or order, although it is not necessary for the plaintiff to obtain such a declaration in the particular case to enable him to obtain the relief for which the suit is really brought, in such circumstances unless his plaint is amended by striking out the prayer for a declaration, the plaintiff cannot complain if he is held liable to pay an *ad valorem* Court-fee under S. 7 (iv) (*c*)".[49] On the other hand, where a declaration (that a valid adoption of the plaintiffs had taken place) was neither claimed in the plaint, nor was it a necessary preliminary to their right to recover possession of the land in suit, S. 7 (iv) (*c*) does not apply.[1]

160. The general rule, as to the scope, and applicability of the clause is that the cause of action as stated in the plaint, and that alone, is to be looked at.[2] The valuation of a suit is to be determined not upon the plea taken in the written statement, but upon the allegations made in the plaint.[3] But it is the substance of the claim, and not the form given to it in plaint, that really matters.[4] The safest course in these cases is to ascertain what the plaintiff actually asks for by his plaint, and not to speculate upon what may be the ulterior effect of his success.[5] This view was followed in *Bagala Sundari Debi* v. *Prosanna Nath*.[6] The PATNA HIGH COURT observed *in Basuki Beharey* v. *Chatter Pandey* "that

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(48) 134 I.C. 1263=1931 Rang. 319=9 Rang. 401: citing; *Deokali Koer* v. *Kedarnath*, 15 I.C. 42=39 Cal. 704; 16 C.W.N. 838; *Hakim Rai* v. *Ishar Das Gorakh Rai*, 8 Lah. 531=102 I.C. 46=1927 Lah. 499=9 L.L.J. 400; *Arunachellam* v. *Rangasami*, 28 I.C. 79=38 Mad. 922=28 M.L.J. 118; and *Parvati* v. *Vishvanath*, 29 Bom. 207.

(49) 134 I.C. 1263=1931 Rang. 319=9 Rang. 401: citing; *Ganga Dei* v. *Sukh Deo Prasad*, 47 All. 78=1924 All. 612=84 I.C. 624=22 A.L.J. 945; *Thula Ram* v. *Dwarka Das*, 50 All. 610=115 I.C. 655=1928 All. 248 =26 A.L.J. 316; and *Ugramohan* v. *Lachmi Prasad*, 56 I.C. 422=1923 Pat. 100=5 P.L.J. 339.

(1) *Ramsamran* v. *Gobind Das*, 68 I.C. 700=2 Pat. 125=1922 Pat. 615=3 P.L.T. 704; cited and folld. in *Maung Shein* v. *Mo Lon Ton*, 134 I.C. 1263=1931 Rang. 319=9 Rang. 401, above.

(2) *Mohendra Chandra* v. *Ashutosh*, 20 Cal. 762; also see *Manghanmal* v. *Tolaram*, 16 I.C. 773; *Karuppa Thevar* v. *Angammal*, 96 I.C. 129= 1926 Mad. 678; and *Krishna Das* v. *Hari Charan*, 10 I.C. 865 (Suit for declaration and injunction, was in substance one to obtain possession of the property).

(3) 98 I.C. 817=1926 Pat. 140; also see *Rajbala Dasi* v. *Radhika Charn*, 79 I.C. 982=1924 Cal. 969.

(4) *See* sub-para. 96 (1) (5), above, of the Comments.

(5) *Venkataramani* v. *Narayanaswami*, 87 I.C. 660=1925 Mad. 713.

(6) 35 I.C. 797=21 C.W.N. 375.

there is no authority which entitles the Court to compel plaintiff to pay Court-fee, not on the footing of the plaint, but on the footing of what is afterwards found by the Court.''[7] However, in *Bhusham* v. *Kala Chand,* the Court examined the prayers in the plaint, and was of opinion that although they had been worded as embodying reliefs which on the face of them appeared to be of a declaratory nature, two at least of these reliefs were really consequential ones, and deficit Court-fees was levied.[8] In *Surendra Narain Singh* v. *Sham Behari,*[9] The PATNA HIGH COURT, stated that ''the proposition, that the mere fact that the prayer is cast in the form for a declaration does not necessarily mean that it is not in fact a prayer for consequential relief, and that *ad valorem* Court-fee has not to be paid, is well established.'' In *Charndas* v. *Jamna Devi*[10] the LAHORE HIGH COURT found that the will challenged by the plaintiff, in the suit, had lost its ambulatory character, and had become operative, and it was held, therefore, that she was bound to ask for consequential relief in the shape of the cancellation of the will, and he must pay Court-fee accordingly:[11] But, where the plaintiff in his suit alleged that a will put forward by defendant was a forgery, and prayed for a declaration of its invalidity, and cancellation of the will and its registration, the MADRAS HIGH COURT treated it as a suit for a mere declaration without consequential relief.[12]

161. (B) EVASION OF STAMP DUTY—Construction of plaint.—It was observed by Jenkins, C.J., in *Deokali* v. *Kedarnath*[13] that it is a common fashion to attempt AN EVASION OF COURT-FEES by casting the prayers of the plaintiff into a declaratory decree. Where the evasion is successful, it cannot be touched, but the device does not merit encouragement or favour''. But as far as possible provisions in a fiscal statute are not to be so construed as to furnish a chance of escape and a means of evasion.[14] Thus, the provision as to declaratory suits requires great care and circumspection in its application, as declaratory suits are too frequently brought with the improper object of

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(7) 79 I.C. 913=1924 Pat. 640.

(8) 106 I.C. 335=1927 Cal. 775=31 C.W.N. 1045.

(9) 1922 Pat. 404=1 Pat. 197; citing *Kaut Kamal* v. *Udit Narain,* F.A. 102 of 1920.

(10) 10 Lah. 403=112 I.C. 48=1929 Lah. 811.

(11) Also see *Hakam Singh* v. *Gyan Devi,* 36 I.C. 95=87 P.R. 1916. (*Held,* that the plaintiffs had not actually asked for consequential relief, but were bound to ask for such relief in the shape of the cancellation of the document, because owing to the death of the testator, the Will in dispute had became operative and that the suit for cancellation of a document would fall under S. 7, (4) (*c*) of the Court-Fees Act.)

(12) *Kattiya Pillai* v. *Ramaswamia Pillai,* 1929 Mad. 396=119 I.C. 35=56 M.L.J. 394.

(13) 15 I.C. 427=39 Cal. 704; also see *Pathumma Umma* v. *Mohideen,* 110 I.C. 752=1928 Mad. 929. (*Held,* that the parties may avail themselves of any camonflage that the law allows or does not forbid.)

(14) *Inland Revenue Commissioners* v. *Oliver,* 1909 A.C. 427; cited in *Nanda Lal* v. *Jogendra Chunder,* 82 I.C. 297=1924 Cal. 881=28 C.W.N. 403=39 C.L.J. 222.

defeating the stamp laws.[15] The learned Chief Justice Jenkins, had further observed in *Deokali Koer* v. *Kedar Nath*,[16] that "if the Courts were astute, as I think they should be, to see that the plaint presented conformed to the terms of the S. 42, the difficulties that are to be found in this class of cases would no longer arise". But, he also observed in an earlier Bombay case, *Kunj Behari* v. *Keshavlal Hiralal*,[17] that "it has been suggested that this is an attempt to evade the Court-Fees Act, but if a pleader can evade that Act, he may; the remedy for that lies not in withholding a relief to which he is entitled as of right, but in procuring an amendment of the Act." Similarly, it was held by Ghose, J., in *Idol Sri Sri Gokul Nath J.* v. *The New Birbhum Coal Coy.*,[18] that it is "not within my province to see whether the suit is properly framed, whether the plaintiff is entitled to the declaration asked, for, or what would be the effect if the plaintiff succeeds in obtaining a declaration as prayed for." Consequently, the view taken by Das, J., in *Narayan Singh* v. *Dildar Ali Khan*,[19] that "it is not open to the Court to say that the plaintiff should have asked for a consequential relief and should have paid the proper fee as in such a suit." Where the plaintiff insists that it is not necessary for him to ask for a consequential relief, he takes the risk having his suit dismissed under S. 42 of the Specific Relief Act, if the Court ultimately comes to the conclusion that it was open to him to ask for a consequential relief. But, he is clearly entitled to have the case made by him in the plaint tried by the Courts, and cannot be called upon to pay the fee as in a suit for a declaration of title and consequential relief.[20] The LAHORE HIGH COURT has held in *Bua Ditta* v. *Ladhamal*, that where the suit as brought was one for declaration only, and a suit for mere declaration was not competent in that case, unless followed up by a prayer for a consequential relief by injunction, or otherwise, that the Court ought to have allowed the plaintiff an opportunity to amend his plaint so as to include the necessary prayer for consequential relief by injunction, or otherwise.[21] It was also held, in this case, that the mere PRAYER FOR GENERAL RELIEF is not necessarily a prayer for consequential relief so as to take the suit out of the class of suits for declaration only.[22]

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(15) 1 Mad. 40:—Per Holloway, J., *also see* West, J., in *Ganpadgir* v. *Ganpadgir*, (Declaratory relief in an attempt to evade stamp duty on an ejectment suit); and *see* and *cf. Venkataramani* v. *Narayanaswami*, 87 I.C. 660=1925 Mad. 713.

(16) 15 I.C. 427=39 Cal. 704.

(17) 28 Bom. 567.

(18) 80 I.C. 589=27 C.W.N. 927.

(19) 80 I.C. 544=1925 Pat. 210=3 Pat. 915=6 P.L.T. 191.

(20) *Ibid.*, 80 I.C. 544=2 Pat. 915, above.

(21) 54 I.C. 833.

(22) *Ibid.*

To the same effect is the observation by PATNA HIGH COURT in *Gangadhar* v. *Debendrabah*.[23]

162. SUITS FALLING UNDER THIS CLAUSE—S. 7, (iv) (c).—The suits falling under this clause, in which there is a prayer for a declaratory decree, combined *with* consequential relief, are too numerous to be specifically illustrated. The principal forms of suits falling under this clause are the following:—

163. (1) ACCOUNTS, AND INSPECTION OF BOOKS.—The BOMBAY HIGH COURT, has held in *Manohar Ganesh* v. *Bawa Ramcharandas*,[24] that a suit merely for a DECLARATION OF LIABILITY ON THE PART OF THE DEFENDANT TO ACCOUNT to him, and to permit him to inspect their books, without asking for the account itself, or for a positive order in the nature of a mandatory injunction for the production of the defendant's books and the offerings, was simply a suit for a declaratory decree without seeking consequential relief, and so within Art. 17, Cl. (iii) of Sch. II. of the Court-Fees Act: but that the order for MANDATORY INJUNCTION WOULD BE A CONSEQUENTIAL RELIEF.[25] This last observation is supported by the Judgment of Birdwood, J., in *Raghunath Ganesh* v. *Gangadhar*,[26] holding that "the injunction prayed for would be a consequential relief; and Cl. (iv) (*c*) of S. 7 of the Court-Fees Act, is, therefore, applicable to the case." Where plaintiff asks for an INJUNCTION AND ACCOUNTS, AS RELIEFS CONSEQUENTIAL ON A DECLARATION, *e.g.*, in a suit to have it declared that the deed in question is not binding on the Dewaswam, his suit in respect of these reliefs comes under S. (iv) (*c*) of the Act.[27]

164. (2) AD INTERIM INJUNCTION.—Where plaintiff's general prayer was couched in terms that would make it declaratory, but the plaintiffs had obtained an *ad interim* injunction in the lower Court which subsisted in spite of the plaintiff's suit having been dismissed, and in appeal, the plaintiffs sought reliefs which they had sought in first Court, it was held by the PATNA HIGH COURT,[28] on reference by the taxing officer, that the *ad interim* prayer is substantial prayer which makes the relief a consequential one, bringing the case within S. 7, (iv) (*c*) of the

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(23) 94 I.C. 22=5 Pat. 211=1926 Pat. 249. Where it was *held*, that "a vague and indefinite prayer for 'any other relief to which plaintiff may be entitled", which is customarily added in a suit, does not turn a suit for mere declaration into one for a declaration with a consequential relief within the meaning of S. 7 (4) (*c*) of the Court-Fees Act, also see *Rachappa* v. *Shidappa*, 50 I.C. 280=1918 P.C. 188 (P.C.), where the prayer (3) was "to grant to the plaintiff any other relief beside this".

(24) 2 Bom. 219 (225, 226)—Per West, C.J.

(25) 2 Bom. 219 (226)—Per West, C.J., also see *Raghunath Ganesh* v. *Gangadhar*, 10 Bom. 60.

(26) 10 Bom. 60.

(27) *Vellora Karuppan* v. *Kallur Venkayil*, 1924 Mad. 611 (2)=78 I.C. 118=19 M.L.W. 249=34 M.L.T. 22=1924 M.W.N. 210.

(28) *Gangadhar* v. *Debendra Bala*, 94 I.C. 22=5 Pat. 211=1926 Pat. 249.

Court-Fees Act. The case of *Deokalikoer* v. *Kedarnath*[29] lends strong support to this view. In that case there was no specific prayer in the memorandum of appeal for an *interim* injunction, and there was only a prayer for declaration of plaintiff's title. But there being an *ad interim* injunction in the Court below on the application of the plaintiff, the Court construed it as bringing the case within S. 7, Cl. (iv) (*c*).[30]

165. (3) ADMINISTRATION OF ESTATE.—The CALCUTTA HIGH COURT has held that an administration suit is a suit for an account, and application of the debtor's estate for the satisfaction of the claims of all the creditors. The Court assumes the administration and settlement of the estate and passes the decree for the benefit of all creditors.[31] Where plaintiff, prayed for a declaration of his right as purchaser of certain property inherited by defendant under a will, and for the administration of any portion of the estate of the testator, yet unadministered, and for the appointment of a receiver, it was held that the suit was one for a declaratory decree with consequential relief falling under S. 7 (iv) (*c*) of the Act; and not under Sch. II, Cl. (xvii): and Court-fee was payable *ad valorem*[32] on the value of the relief relating to administration, as put by plaintiff himself. In *Ramaswami Ayyar* v. *Rangaswami*,[33] the MADRAS HIGH COURT was not concerned with the question what Court-fee should be paid by a creditor who institutes an administration suit. The question, however, was what Court-fee, if any, should be paid by another creditor who comes in with a CLAIM AFTER A PRELIMINARY DECREE FOR ADMINISTRATION has been made in such a suit. The Court found, and it was so admitted by the Crown, that there is no explicit provision in the Court-Fees Act requiring any Court-fee to be paid on such a claim. In disposing of the contention of the learned Government Pleader that such a creditor's suit for administration is really a suit for an account to be governed, on the ANALOGY OF OTHER SUITS FOR ACCOUNT, by S. 11 of the Court-Fees Act, the Court observed, that "in a sense a creditor's suit for administration is a suit for an account; but the analogy between it and an ordinary suit for an account WILL NOT CARRY US FAR ENOUGH". "First, that in an ordinary suit for account, if a larger amount is found due to the plaintiff when the account is taken than that on which he has paid Court-fee, S. 11 of the Court-Fees Act provides that he cannot execute his decree for the larger amount without paying additional Court-fee on it. . . Here it is contended that the creditors other than the plaintiff creditors must pay additional Court-fees at an earlier stage, not when they are

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(29) 15 I.C. 427=39 Cal. 704=16 C.W.N. 838.

(30) 94 I.C. 22 (25)=5 Pat. 211=1926 Pat. 249.

(31) *Sasi Bhusan* v. *Maharaja*, 44 Cal. 890=38 I.C. 835=24 C.L.J. 448=21 C.W.N. 310; Diss. in *Ramaswamy Aiyar* v. *Rangaswamy Aiyar*, 134 I.C. 1137 (2)=1931 Mad. 683; *also see* S. 7 (4) (*f*).

(32) *Rupchand Ghose* v. *Khirodamayi Dasi*, 75 I.C. 567=1923 Cal. 329=27 C.W.N. 457.

(33) 134 I.C. 1137 (2)=1931 Mad. 683.

executing any decree or order which they may eventually obtain in the suit, but when they put in their claims.'' Second, ''in one sense the creditor's suit is for the benefit of all the creditors of the estate. But, the other creditors cannot be held to be represented by him in the sense that they are in effect parties to the suit from the outset''; thirdly, ''in an administration suit the Court takes the control of the estate, and distributes it among the creditors, and it is no part of the duty of the Court to do that in any ordinary suit for account.'' In this connection, the *obiter dictum* in *Sashi Bhusi Bose* v. *Manindra Chander*[34] where the learned judges said,

> ''After the preliminary decree has been made and the other creditors have been invited to establish their claims, if any, against the debtor, each creditor who puts forward a claim not already transformed into a judgment-debt may well be required to pay Court-fees *ad valorem* on his application, as if it were a plaint in a suit for the recovery of the sum claimed. Such a procedure can be sustained on the analogy of S. 11 of the Court-Fees Act.''

was not agreed to, as the Court did not see how any fiscal statute can be applied by analogy. The principle acted upon was that ''when the state requires the subject to pay a tax of any kind, that must be done by definite enactment strictly interpreted.'' Consequently, it was held, that there being NO ENACTMENT REQUIRING COURT-FEE TO BE PAID ON SUCH CLAIMS AS THESE, the claims were to be inquired into without Court-fee.[35] Ayyar, J., agreed in this view, pointing out that ''the Court-Fees Act being a fiscal enactment has to be construed according to well-known rules of interpretation. The Courts are not entitled to strain the wording of the Court-Fees Act with a view to tax the subject. It may be that the present is A CASE OF OMISSION. If that is so, it is not a matter for the Courts but one for the Legislature.''[36] A suit for accounts and administration was held to be properly valued in the discretion of plaintiff, under Ss. 7 (iv) (*f*), and 11 of the Court-Fees Act, by the BOMBAY HIGH COURT in *Khatija* v. *Adam Hussenally Vasi*,[37] but this authority does not deal with the question noticed above, as to *ad valorem* Court-fee not being provided for specifically, in the case of creditors who seek to file claims, after the preliminary decree, in pursuance of the order of administration passed by a Court. The LAHORE HIGH COURT holds that a SUIT FOR ADMINISTRATION IS NOT A SUIT FOR POSSESSION OF IMMOVEABLE PROPERTIES and a suit against persons in possession of the property during the lifetime of the deceased as agents, or managers on his behalf, who continue to be in such possession and are liable to account for the property to him, is maintainable against persons in this capacity.[38]

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(34) 44 Cal. 890=38 I.C. 835, etc.

(35) Per Reilly, J., in *Ramaswami* v. *Rangaswami*, *supra*, 134 I.C. 1137 (2) at p. 1139.

(36) *Ramaswami* v. *Rangaswami*, *supra*,—Per Ananthakrishna Ayyar, J.,—134 I.C. 1137 (1142).

(37) 29 I.C. 949=39 Bom. 545=17 Bom. L.R. 574.

(38) *Praphull Dev* v. *Sham Lal*, 138 I.C. 335=1932 Lah. 328.

166. (4) ADOPTIONS—**Patna.**—In *Ugra Mohan Chaudhuri* v. *Lachhimi Basad, the* PATNA HIGH COURT held, that where plaintiff asked for a declaration of his title as the adopted son, which was denied by the defendants, in a claim to recover possession, the prayer so far from being a surplusage, was the very foundation of the plaintiff's case, and therefore, the suit was for a declaratory decree with consequential relief, and that *ad valorem* Court-fee must be paid on the value of the suit.[39] A challenge having been directly thrown upon the title, a suit for declaration of title as adopted son, and for possession is a suit that comes within S. 7, Cl. (iv) (*c*) of the Court-Fees Act.

167. Nagpur.—The Nagpur JUDICIAL COMMISSIONERS COURT has held in *Ganpat Rao* v. *Laxmi Bai*,[40] that where plaintiff sued for a declaration that he was the adopted son of one B, and, therefore, entitled to his property of which he was already in possession, was for a declaration without consequential relief, and the suit fell under the category of the suits mentioned in Cl. (iii) of Art. 17 of Sch. II of the Court-Fees Act. And in a later case, *Chinki* v. *Narayan*,[41] the view taken is that "in a suit for declaration that an adoption is valid or invalid, if it affects a title to property, the Court-fee payable is on the value of the property title to which is affected." In *Harihar Rao* v. *Sahu Bai*,[43] it was held that a suit for a declaration that an adoption is valid or invalid should be valued at Rs. 400 under the rules made by the Court of the Judicial Commissioner, C.P. and Berar, and published in Civil Circr. No. 11-8, unless it affects a title to any property exceeding Rs. 400 in value, in which case the market-value of the property should be deemed to be the value of the subject-matter of the suit, and the suit should be valued for the purpose of Court-fees and Jurisdiction accordingly. The proviso to the circular fixing the value of the suit at the value of the property, the title to which is affected by it, is anomalous, but has to be followed. These rulings were followed in *Amdu* v. *Pissi*,[43] where it was held that in a suit for a declaration that an adoption is valid or invalid affecting title to property, if the value of property exceeds Rs. 400, the plaint must be stamped *ad valorem* according to the value of the property affected. In *Nok Singh* v. *Bholu Singh*,[44] it was held by the majority of Judges, that the rule contained in Notification No. 1641, dated 28th September, 1911, Paragraph 1, given in the Judicial Commissioner's Civil circular 118 has the force of law, and a suit for a declaration that an adoption is invalid affects title to property, and Court-fee is payable *ad valorem*. Kinkhede, A.J.C. dissented, and he relied upon the present tense only being employed in the word "affects." The majority view was that "if

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(39) (1920) 56 I.C. 422=5 P.L.J. 339=1922 Pat. 6; also 1923 Pat. 100.

(40) (1918) 43 I.C. 64=15 N.L.R. 24.

(41) (1920) 58 I.C. 965 (1).

(42) 103 I.C. 268 (*b*)=1927 Nag. 256=10 N.L.J. 106.

(43) (1929) 120 I.C. 408=1930 Nag. 20.

(44) 123 I.C. 417=1930 Nag. 73.

that construction were to be pushed to its logical conclusion, then in no conceivable case could the title to the property be said to be affected at the time when the question of Court-fee has to be determined.'' Accordingly, it was ruled that what is to be regarded is the result at the time the plaintiff gets his decree, assuming the suit to be decided in his favour. Then undoubtedly, at and from that moment the title of the defendant to property would disappear, and there was no special injustice or inequity in requiring a reversioner to pay *ad valorem* Court-fee on a claim of this nature, the effect of which, if allowed, will be to take away the defendant's title.[45]

168. Madras.—A similar view has been taken by the MADRAS HIGH COURT in *In re Ramaswami Asari*[46] following an earlier ruling, in *Keshava Sanabhaga* v. *Lakshminarayana*,[47] by the same High Court. In 6 Mad. 192, it was observed, that ''where the plaintiff has asked for a declaration that the adoption was not made, and that if it was made, it was invalid, the fact and validity of the adoption is then the subject of the suit, and in valuing it for purposes of jurisdiction, a computation must be made of the value of the interest that would be lost to the alleged adopted minor if the adoption be declared invalid.'' Accordingly, Devadoss, J., held, in the stamp reference,[48] ''that when a plaintiff comes into Court urging that an alleged adoption did not take place, and even if it did take place it is not valid, he asks for a relief not merely with regard to the adoption, but to the property which the adopted boy would acquire by means of the adoption,'' if the adoption were true and valid; and which he would lose if the adoption be declared invalid. And, ''whether the plaintiff gets anything at present or not, we must consider the value of the relief as being the loss to which the defendant would be put in case the relief asked for is granted.'' In the converse case, also, ''if a person asks for a declaration that he is the adopted son of X, the valuation of the relief prayed for would be the value of the property he would acquire by the adoption being upheld.''

169. Allahabad.—The ALLAHABAD HIGH COURT in *Sheo Deni Ram* v. *Tulshi Ram*[49] differed from the view of MADRAS HIGH COURT in *Keshava Sanabhaga* v. *Lakshminarayana*,[50] and held that the value for the purpose of jurisdiction to set aside an adoption is not the value of the property which may possibly change hands if the adoption be set aside, but the value put upon his plaint by the plaintiff. The Court did not see ''why we should import into a suit, which only asks for a declaration, that a

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(45) Per Findlay, J.C., and Kotval, A.J.C., in 123 I.C. 417 (Nag.) =1930 Nag. 73.

(46) 52 Mad. 340=113 I.C. 363=1928 Mad. 1294=1928 M.W.N. 660 =28 L.W. 660=56 M.L.J. 107.

(47) 6 Mad. 192=7 Ind. Jur. 186.

(48) 52 Mad. 340=113 I.C. 363=1928 Mad. 1294, *supra*.

(49) 15 All. 378=(1893) 13 A.W.N. 147.

(50) 6 Mad. 192=7 Ind. Jur. 186, [f.-n. (47) above].

certain deed is invalid, the consideration, that, at some future time, the plaintiff or the defendant may or may not enter into or be entitled to claim some property by virtue of the decree which may be passed in that suit.''

170. Bombay.—A suit to establish an adoption independently of any claim to any property, falls under Sch. II, Art. 17 (v)[1]. In *Bai Machhabai* v. *Bai Hirbai*[2] a suit to obtain a declaration that an adoption was invalid was valued for purposes of Court-fee at Rs. 130, though the property affected by the adoption was more than Rs. 5,000 in value. The case was taken to be falling under S. 7 (iv) (*c*), (*d*). In *Shidappa* v. *Rachappa*,[3] the question was as to jurisdiction of Court, in a suit for a declaration that the plaintiff was the adopted son of one V and as such entitled to his property; the plaintiff sought for a bare declaration of rights in respect of property attached by the Collector after V's death: and he sought for a declaration and consequential relief with regard to house already in his possession, and was allowed to put his own valuation upon the plaint.

171. Calcutta.—A suit to set aside an adoption and to recover property does not fall under Sch. II, Art. 17 (v). In *Prohlad Chandra Das* v. *Dwarka Nath*,[4] the CALCUTTA HIGH COURT followed the[5] practice of that Court for a number of years. It was held that it is competent to the plaintiff to value the relief claimed in his suit to set aside an adoption, and that valuation is to be taken to determine the *forum* of the Court to decide the suit.

172. Lahore.—In *Ganga Singh* v. *Sher Singh*,[6] the question related to valuation of suit for a declaration that an adoption did not affect plaintiff's reversionary rights. A Court-fee of Rs. 10 was paid on the plaint, and the value for purposes of jurisdiction was fixed at over Rs. 6,000. It was held, that the suit was *not for annulling the adoption* within the meaning of the Rules and Orders of the High Court, [Vol. III, R. 1 (4)] according to which a suit for a decree annulling an adoption is for purposes of the Court-Fees Act to be valued at Rs. 200, and for purposes of the Suits Valuation Act, and the PUNJAB COURTS ACT to be valued at such sum exceeding Rs. 500, and not exceeding Rs. 1,000 as the plaintiff shall state in his plaint.

173. SUMMARY.—(i) A suit may be confined to the question of the VALIDITY, OR INVALIDITY OF THE ADOPTION, WITHOUT INVOLVING ANY CONSEQUENTIAL RELIEF, or relating to any property moveable, or immoveable. A suit merely for declaration, pure and simple, where no consequential relief is prayed, falls under Art. 17, Cl. (iii) of course; in Madras this is subject to the Local Amendments of the Act.

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(1) *Baji* v. *Raghnath*, 1876 B.P.J. 142; *also see* 1 Bom. 248.
(2) 35 Bom. 264=13 Bom. L.R. 251=10 I.C. 816.
(3) 36 Bom. 628=14 Bom. L.R. 757=16 I.C. 1005.
(4) *Bama Soondaree* v. *Soorjoo Coomar*, 22 W.R. 338.
(5) 6 I.C. 636=14 C.W.N. 929=37 Cal. 860.
(6) 84 I.C. 486=5 Lah. 440=6 L.L.J. 585.

(ii) And a suit to set aside an adoption, without any other or further relief falls under Art. 17 (v), though there is a question of title to property involved, but no relief therefor is prayed.[7] The relief in such cases is only as to *status* of the alleged adopted son.

(iii) Declaratory suits, for validity, or invalidity of an adoption, where there is a prayer for a consequential relief, falling under S. 7 (4) (*c*), *or* 7 (4) (*d*), if the prayer is for an injunction. Here the prayer for a relief relating to adoption refers to a right to property, though the plaintiff may have no present benefit from the granting of the relief. According to the High Courts of Allahabad,[8] Bombay,[9] Calcutta,[10] ond Patna,[11] the Court-fee has to be paid *ad valorem* on the value of the suit put by the plaintiff. On the contrary, the MADRAS HIGH COURT,[12] and the Nagpur Judicial Commissioner's Court,[13] hold that the relief prayed involves the consideration of the gain or loss of property in future to the alleged adopted son, and this represents the value of the relief in suits of this description.

174. (5) ANNUITY.—In *Bhimsangji* v. *Dolatsangji*,[14] The BOMBAY HIGH COURT has held, that a suit for a declaration that the plaintiff is the owner of the Toda Giras Hak, as the heir of a deceased recipient of the Hak, and is as such entitled to recover it, comes within S. 7 (iv) (*c*), "to obtain a declaratory decree or order where consequential relief is prayed": and the Court-fee stamp would be according to the amount at which the relief sought was valued in the plaint. It could not be said that the claim was for payment of an annuity, under S. 7 (ii), in which case the value for the purposes of the Court-fee would be ten times the amount claimed to be payable for one year. The reason being

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(7) *Baji* v. *Raghunath*, 1876 B.P.J. 142; *Kalova Kom* v. *Padapavalad*, 1 Bom. 248; *Ganpat Rao* v. *Lakshmi Bai*, 43 I.C. 64=15 N.L.R. 24; also *Ganga Singh* v. *Sher Singh*, 5 Lah. 440=84 I.C. 486=1925 Lah. 229; and *Shidappa* v. *Rachappa*, 36 Bom. 628=14 Bom. L.R. 757=16 I.C. 1005.

(8) *Sheo Devi Ram* v. *Tulshi Ram*, 15 All. 378=13 A.W.N. (1893) 147.

(9) *Bai Machha Bai* v. *Bai Hir Bai*, 35 Bom. 264=13 Bom. L.R. 251 =10 I.C. 816; also *Shidappa* v. *Rachappa*, 36 Bom. 628=14 Bom. L.R. 757=16 I.C. 1005.

(10) *Prohlad Chandra Das* v. *Dwarka Nath Das*, 6 I.C. 636=14 C. W.N. 929=37 Cal. 860; also *Bama Soondaree* v. *Soorjoo Coomar*, 22 W. R. 338.

(11) *Ugra Mohan* v. *Lachhmi Prasad*, 56 I.C. 422=1922 Pat. 6= 5 P.L.J. 339; and 1923 Pat. 100.

(12) *Keshav Sanabhaga* v. *Lakshmi Narayana*, 6 Mad. 192; In re *Ramaswami Asari*, 52 Mad. 340=113 I.C. 363=1928 Mad. 1294; *cf.* 50 Mad. 646.

(13) *Chinki* v. *Narayan*, 58 I.C. 965 (1); *Harihar* v. *Sahi Bai*, 103 I.C. 268 (b)=1927 Nag. 256; *Amdu* v. *Pissai*, 120 I.C. 408=1930 Nag. 20; also *Noko Singh* v. *Bholu Singh*, 123 I.C. 417.

(14) 87 I.C. 801=1925 Bom. 282 (1)=27 Bom. L.R. 247.

that "all that the plaintiff was seeking was a declaration that he was entitled to an annuity which was enjoyed by the deceased, and having got that declaration, the plaintiff would be entitled to go to the official whose duty it was to pay the annuity, and demand payment according to the decree of the Court."[15] The NAGPUR JUDICIAL COMMISSIONER'S COURT, has also held that a suit asking for a declaration that a certain sum of money was settled as the maintenance of the plaintiff, and for the amendment of a document to this effect, is strictly speaking, one under S. 31 of the Specific Relief Act, and as such, being a suit for a declaration with consequential relief, it was governed by S. 7 (iv) (*c*) of the Court-Fees Act, for purposes of Court-fees, and Jurisdiction.[16]

175. (6) **APPOINTMENT OF RECEIVER.**—In *Lakhmi Das* v *Daropti*, the PUNJAB CHIEF COURT, has held, that S. 7, Cls. (*c*) and (*d*) applied to a suit for declaration by a reversioner of a Hindu widow, in possession of her deceased husband's estate, praying that the alienations by the widow shall not affect his reversionary rights, and further, praying that the money received from the widow be restored by the alienees or donees and deposited in safe custody. The claim did not amount to one for possession of the whole of deceased's estate, but for a declaration and appointment of a receiver and restoration of the property to the status *quo ante*:[17] and the Court-fee, on appeal, was payable *ad valorem* on the value of the suit assessed in the Court of first instance and on appeal under S. 7 (iv) (*c*) and (*d*). This view was in accordance with the view of the CALCUTTA HIGH COURT, in *Mahomed Zuhuruddin* v. *Mahomed Noorooddin*,[18] in which it was held that the appointment of a Receiver operates as an injunction against the parties, their agents and persons claiming under them, restraining them from interfering with the possession of the Receiver except by permission of the Court. Similarly, it had been held, in *Hari Sankar Dutt* v. *Kali Kumar Patra*,[19] that a suit by a plaintiff in possession, for declaration of his title to land, and for an injunction restraining defendants from, interfering with his possession by cutting trees thereon, and for damages, is governed by S. 7 (iv) (*c*) and (*d*) of the Court-Fees Act. In *Dodda Sanekappa* v. *Sakravva*,[20] the suit was for a declaration that certain transactions, by a Hindu widow, are not binding upon the plaintiff, and for the appointment of a receiver to preserve the

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(15) *See* and *cf.* cases under "ANNUITY" in S. 7 (ii), *ante;* Para. 66 of the Comments: [Note.—A claim for arrears of maintenance only, but no declaration as to future right to maintenance, falls under S. 7 (i) of the Act; but a claim for a declaration of right to receive annuity, also for arrears of the sum so payable comes under S. 7 (ii) of the Act, and, a claim for declaration of title, and for recovery of annuity falls under S. 7 (iv) (c) of the Act.]

(16) *Bari Babu* v. *Kundan Singh*, 1923 71 I.C. 31=1922 Nag. 264.

(17) 93 P.R. 1913=19 I.C. 859=134 P.W.R. 1913=232 P.L.R. 1913.

(18) 21 Cal. 86 (91).

(19) 32 Cal. 734=9 C.W.N. 690.

(20) 36 I.C. 831 (Mad.).

property from being wasted; and the MADRAS HIGH COURT held that this was a prayer for a consequential relief on which *ad valorem* Court-fee is payable, but it need not be valued on the values of the properties in respect of which the relief is sought; the plaintiff being at liberty to put his own value and pay Court-fee thereon. The Punjab case was cited, in *Harbans Sahu* v. *Lalmanikuer*,[21] by the PATNA HIGH COURT, in support of its view that a suit by a Hindu reversioner for a declaration that the widow is wasting her husband's estate, and for appointment of a Receiver, is a suit for a declaration and consequential relief, and falls under S. 7 (iv) (*c*) of the Court-Fees Act. The Punjab and Patna cases were relied upon by the NAGPUR JUDICIAL COMMISSIONER'S COURT, in *Krishna Rao* v. *Chandrabaga Bai*,[22] in holding that in a suit for declaration of title, the prayer for the relief for the appointment of a Receiver is in the nature of consequential relief, and as such the plaintiff is entitled to put his own valuation on it. This view is supported by a ruling of the ALLAHABAD HIGH COURT, also, in *Manmatha Nath Biswas* v. *Rohilli Moni Dasi*,[23] where it was observed that the Court-Fees Act does not make any provision for the relief by way of the appointment of a Receiver, and it is not possible to put a value upon the claim. "At the most, it would be regarded as a consequential relief under S. 7 (iv) (*c*) of the Act." The same view is taken by the ALLAHABAD HIGH COURT in a recent case [24] where following the Punjab and Patna cases, it has been held that the appointment of a Receiver is a relief consequential upon the declaratory title as next reversioners of a Hindu widow, alleging that she was transferring property without legal necessity and was committing acts of waste. But a different note seems to have been struck by the Madras High Court, in *Karuppana Thevar* v. *Angammal*,[25] where it is observed that in a suit by the plaintiff claiming to be the reversionary heir of a deceased Hindu challenging an alienation made by the widow of the deceased and making various charges regarding alleged waste by her of the property of the deceased, and asking for a declaration that the alienation specially mentioned in the plaint was not binding upon him, and for the appointment of a Receiver to take possession of the estate and to manage it during the life-time of the widow, the two reliefs claimed by the plaintiff were distinct and independent of each other, and there was no necessary connection between them. Accordingly, it was held that the prayer for the appointment of a Receiver was not consequential upon the declaration within the meaning of S. 7 (iv) (*c*) of the Court-Fees Act, and

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(21) 62 I.C. 36=1922 Pat. 61 (62); (In this case the plaintiff expressly asked for a declaration that the widow was wasting the estate); cf. *Chattar Pali* v. *Kalapdei*, 1932 All. 114, applying S. 7 (iv) (c), although no such relief was asked for therein.

(22) 79 I.C. 668=1924 Nag. 316.

(23) 27 All. 406=2 A.L.J. 94; and 1905 A.W.N. 6.

(24) *Chatarpali* v. *Kalapdei*, 1931 A.L.J. 837=1932 All. 114.

(25) 96 I.C. 129=1926 Mad. 678.

that Court-fees were payable upon the plaint under Art. 17 (i) (*a*) and (*b*) of Sch. II, to the Court-Fees Act. It may be pointed out that the earlier case in *Dodda Sankappa* v. *Sakravva*[26] was referred to only in connection with the competency of revision and none of the rulings of other High Courts bearing upon the question of appointment of Receiver being a consequential relief are cited or discussed in this judgment.

176. (7) **ATTACHMENT IN EXECUTION: REMOVAL OF ATTACHMENT.**—The ALLAHABAD HIGH COURT, has held in *Ostoche* v. *Hari Das*[27] that in a suit for a declaration of proprietary right to certain property, attached in execution of a decree, the prayer for the REMOVAL OF AN ATTACHMENT of such property, is a consequential relief, the value of which "rests with the plaintiff, and not with the Court," and is merely nominal. In this case, there was no prayer for possession of the property.[28] However, in a Bombay case, where removal of attachment was sought, along with a prayer for possession of the house attached, Court-fee was held payable *ad valorem* on the consequential relief asked for.[29] The MADRAS HIGH COURT, has held in *Kanmathi* v. *Kunhamid*,[30] that a suit for declaration of right to a share of the Kanom amount, by getting a summary order set aside, is liable to a fixed Court-fee of Rs. 10 under Cl. (vi) of Art. 17 of Sch. II, of the Court-Fees Act, 1870. A suit for declaration that certain property belongs to the plaintiff, and is not liable to be sold in execution of a mortgage decree which has been passed in a suit to which the plaintiff has not been a party does not involve any consequential relief, and does not require *ad valorem Court-fee*.[31]

177. **RESTORATION OF ATTACHMENT.**—In a Full Bench case,[32] the BOMBAY HIGH COURT has held, that suits brought to set aside or to restore an attachment upon a house, in pursuance of the permission given in S. 246, Criminal Procedure Code, 1882, may be regarded either as "suits to obtain a declaratory decree or order where consequential relief is prayed," so as to fall within S. 7 (iv) (*c*) of the Court-Fees Act; or as "suits to obtain or set aside a summary decision or order," in which case the stamp duty payable would be that prescribed by Art. 17, Cl. (i), Sch. II, of the Court-Fees Act. The Court-Fees Act being a fiscal enactment, it is the duty of the Courts to treat such suits as belonging to the latter class (it being more favourable to the suitor), and

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(26) 36 I.C. 831 (Mad.).

(27) 2 All. 869.

(28) *Ibid.*

(29) *Motichand* v. *Dadabhai*, 11 Bom. H.C. (A.C.) 186.

(30) 15 Mad. 288.

(31) 1925 Oudh 500=85 I.C. 349; (cf. *Sripal Singh* v. *Jagdish Narayan*, 65 I.C. 980=24 O.C. 361 (Suit brought by a person who was a party to the decree on the mortgage).

(32) 4 Bom. 515 (F.B.).

to impose fees accordingly. Consequently, a stamp of Rs. 10 is sufficient for the plaint or memorandum of appeal in a suit brought for restoration of an attachment upon a house which has been removed at the instance of an intervenient under S. 246, Civil Procedure Code, 1882. Another Full Bench of the same High Court has held in *Vithal Krishna* v. *Balkrishna*,[33] that where, on the removal of an attachment at the instance of a third party, the Judgment-creditor brought a suit to establish the right of his Judgment-debtor to the property from which the attachment had been removed, and to get the summary order to remove the attachment set aside, the proper stamp on a plaint of that kind was Rs. 10 under S. 6, and Sch. II, Art. 17 of the Court-Fees Act VII of 1870. This view has been followed by the MADRAS HIGH COURT, in *Kammathi* v. *Kunhamed*.[34] The ALLAHABAD HIGH COURT has likewise held, in *Dildar Fatima* v. *Narain Das* that the Court-fee payable on the plaint and memorandum of appeal in a suit under S. 283 of the Civil Procedure Code praying (*a*) for declaration of right to certain property, and (*b*) that the said property might be released from attachment in execution of a decree, was Rs. 10 in respect of each of the reliefs prayed.[35] But, in *Gobind Nath Tiwari* v. *Gajraj Mati*,[36] where the plaintiffs specified in their plaint as the reliefs sought by them (1) that it be declared by the Court that the property in question is the joint ancestral property of the plaintiffs, and not liable to attachment and sale in execution of a decree against the defendant judgment-debtor, at the instance of his creditor, decree-holder; (2) that the costs of the suit be also awarded by the decree; (3) general prayer for "any other relief which the Court may think the plaintiffs entitled to may also be granted:" and the suit was valued with reference to the amount of the decree and the value of the property at Rs. 6,000, it was held that the suit should be deemed a suit for one declaratory decree only, without consequential relief, and that a Court-fee of Rs. 10 was sufficient. The Taxing Officer had reported that if the declaration as to property being the plaintiffs' was granted, the second proposition that it was not liable to attachment under a certain decree necessarily followed; and on this report the Court-fee of Rs. 10 was held sufficient.[37]

178. SUIT TO SET ASIDE ORDERS IN CLAIM PROCEEDINGS.—It was held in *Ram Prasad* v. *Sukhdai* by the

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(33) 10 Bom. 610 (F.B.); refd. in *Venkappa* v. *Narasimha*, 10 Mad. 187.

(34) 15 Mad. 288; (Court-fee Rs. 10 on a suit to establish title by getting the summary order set aside).

(35) *Dildar Fatima* v. *Narain Das*, 11 All. 365=9 A.W.N. (1889) 131; *cf.* 35 Cal. 202 (P.C.), which would seem to conflict with this view.

(36) 13 All. 389=11 A.W.N. (1891) 139.

(37) But see *contra R. M. L. M. Subramaniah Chetty* v. *Maung Maung Pe*, U.B.R. 1897, 1897-1901, Vol. II, 353.

ALLAHABAD HIGH COURT[38] that a claim suit (under S. 283, Civil Procedure Code, 1877, and 1882: corresponding to O. XXI, R. 63, Civil Procedure Code, 1908), to establish right to attached property by a plaintiff in possession of immoveable property, praying "for protection of such property from sale in execution" is one for a declaratory decree, with consequential relief, and the plaint or memorandum of appeal in such a suit must, therefore, be stamped under S. 7 (iv) (*c*), and not under Sch. II, Art. 17 (iii) of the Court-Fees Act. This was OVERRULED by a Full Bench in *Moti Singh* v. *Kanusilla*,[39] which held, that where a claimant whose objection has been disallowed brings a suit, and makes the judgment-creditor who was trying to execute the decree, the sole defendant to the suit, a claim for a declaration that the property under attachment was the plaintiff's property, and not liable to attachment in execution of the decree of the defendant is a claim for only one declaration and that for such purposes, and in such a suit it is immaterial whether the claim is that the property is the plaintiff's and not liable to attachment, or that the property is the plaintiff's as against the defendant's right to attach, and that the order in attachment should be cancelled. When the judgment-creditor is the sole defendant in the suit, the claim worded in either of these ways must be regarded as a claim for only one declaration. "Where, however, the person objecting brings his suit, and makes not only the execution-creditor in the attachment proceedings, but also the judgment-debtor in those proceedings parties to the suit, and asks for a declaration of plaintiff's title to the property under attachment as against the judgment-debtor, and also asks for a declaration in denial of the judgment-creditor's right to bring the property to sale in execution of the judgment-creditor's decree, then there are two substantial declarations asked for."[40] O. 21, R. 63, of the present Civil Procedure Code, provides for suits to establish right to attached property. This rule gives a statutory right of suit to the party against whom an order is passed in the claim proceedings.[41] The object of the suit is to establish the right which has been negatived by the claim order;[42] and is, in substance, a suit brought to reverse the order passed on a claim in execution proceedings.[43] Their Lordships of the Privy Council, have again explained the nature of such claim suits, and the proper Court-fee payable on the plaint, in *Phul Kumari* v. *Ghanshyam Misra*.[44] The plaintiff in this case was the registered

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(38) 2 All. 720 (F.B.); refd. in *Balkaran Rai* v. *Gobind Nath Tewari*, 12 All. 129 (163) (F.B.); as authority for the position that Rs. 10 Court-fee is insufficient in such cases; but *see* 16 All. 308 (212) (F.B.), overruling this decision.

(39) 16 All. 308=14 A.W.N. (1894) 109 (F.B.).

(40) 16 All. 308 (F.B.)=14 A.W.N. (1894) 109.

(41) Chitaley's C.P. Code, p. 2060.

(42) *Amjud Ali* v. *Kunhoo*, 17 W.R. 304 (305)=9 Beng. L.R. App. 28; *Ganesh* v. *Ramchandra*, 1873 Bom. P.J. 505 (506).

(43) *Alexander Mitchell* v. *Mathuradas*, (1886) 8 All. 6 (9)=12 I.A. 150 (P.C.); 9 Ind. Jur. 442 (P.C.).

(44) 35 Cal. 202 (205-208) (P.C.).

proprietor of certain property, which was attached, and advertised for sale in execution of a decree against the judgment-debtor, from whom the plaintiff alleged her purchase. After unsuccessful objection proceedings the plaintiff claimed a declaration of right to attached property, and for an injunction restraining the decree-holder from execution against the property aforesaid, paying a Court-fee of Rs. 10 for each relief. The Courts in India treated the suit as one for declaration with consequential relief, and Court-fee was directed to be paid *ad valorem* on the value of the property. Their Lordships observed that both parties had gone wrong in the matter. The plaintiff's claim was a claim brought under the provision of Civil Procedure Code, which is described under Art. 17, Sub-Cl. (i) of Sch. II. "This was an exact description of the effect of the appellants' suit," "with merely a verbal or formal difference:" and, the Civil Procedure Code "recognizes such a suit as not merely an appropriate but the only mode of obtaining review in such cases." Their Lordships, in applying Art. 17, of Sch. II, to the case, remarked, that "misled by the form of action directed by Civil Procedure Code, both parties had treated the action as if it were unrelated to any decree forming the cause of action. Accordingly, on the one hand, the appellant pointing to her prayer for a declaration says she pays Rs. 10 on that, and pointing to her prayer for injunction, says she pays other Rs. 10 on that. In their Lordships' Judgment, this is not the proper view of the suit taken as a whole; but, if it were, it would be extremely difficult for the appellant to bring her suit, which asks consequential relief as well as declaratory decree, within the enactment which she evokes. On the other hand, the respondents equally ignore the essential fact that it is a PLAINT FOR REVIEW OF A SUMMARY DECISION; and they go on to bring the action, treated as an original action, within the class of cases where the Court-fees are *ad valorem* of the action." This authoritative pronouncement, sets at rest the conflict of decisions between certain High Courts. Their Lordships approve of the decision of Sargent, C.J., in *Dhondo Sakharam* v. *Govind Babaji* of BOMBAY HIGH COURT;[45] and they take a different from certain decisions of the CALCUTTA AND ALLAHABAD HIGH COURTS,[46] which must be taken as overruled. It has been held, by Pullan, J., in *Ramdayal* v. *Baldeo Prasad*,[47] that a suit by a decree-holder for declaration that certain deeds of gift and sale by judgment-debtor and his wife are fictitious and that the property covered by the deeds is liable to be attached is a purely declaratory suit, as the latter prayer is implied in the former.

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(45) (1884) 9 Bom. 20.

(46) *Jelalooddeen* v. *Shoharoolah*, 22 W.R. 422=15 Beng. L.R. App. 1; *Ahmed Mirza* v. *Thomas*, 13 Cal. 162; *Gulzari Mal* v. *Jaduv Rai*, 2 All. 63; (Suit to set aside order in objection proceedings and for declaration of title brought on a stamp of Rs. 20); also see and cf. *Dildar Fatima* v. *Narain Das*, 11 All. 365=9 A.W.N. (1889) (3); and *Gobind Nath* v. *Gujraj*, 13 All. 389.

(47) 8 O.W.N. 124:A.I.R. 1931 Oudh 72.

179. THE LEGAL POSITION now is that where an unsuccessful claimant brings a suit, under O. XXI, R. 63, Civil Procedure Code, the suit is to be taken as falling under Sch. II, Art. 17, Cl. (i), and the prayer for consequential relief by injunction restraining execution, or for release of property from attachment, is to be treated as a surplusage, not of the real essence of the suit.[48] But, where the obtensible owner is also joined as a party to the suit, and a prayer is made against him for recovery of possession, the Court-fee payable would be calculated upon the value of the property in accordance with S. 7 (iv) (*c*) of the Act.[49] Further, if in such a suit the plaintiff is defeated, and he prefers an appeal, he must pay Court-fees on the value of the property *plus* Rs. 10 for declaration: and, if the plaintiff succeeds in the suit, and an appeal is preferred by the defendants, the Court-fee to be paid must be regulated by a consideration of the relief sought in appeal.[49] If the attaching creditor appeals, the Court-fee would be Rs. 3 only. If the ostensible owner appeals, the Court-fee payable would be calculated upon the value of property.[50]

180. The right of suit, under O. XXI, R. 63, it may be pointed out, is not in any way, governed or qualified by the proviso to S. 42, of the Specific Relief Act; and, a *further relief*, other than a mere declaration need not be asked for in such a suit.[1] On the other hand, a plaintiff in a suit under this rule, is not precluded from asking for other reliefs than a mere declaration of the right denied to him by the claim order.[2] Ordinarily, the order passed in claim proceedings, does not affect the right or title of the judgment-debtor to the property, and the contest is really between the attaching decree-holder who asserts that the property is liable to attachment and sale in execution of his decree, and the claimant who alleges that it is not in the actual or constructive possession of the judgment-debtor, and, therefore, not liable to attachment. But, the Allahabad Full Bench case in *Moti Singh* v. *Kaunsilla*,[3] and the Patna case of *Chandra Dhari Singh* v. *Tipaw Prasad Singh*,[4] contemplate the possibility of a judgment-debtor being

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(48) *Phul Kumari* v. *Ghanshyam Misra*, 35 Cal. 202 (205, 208) (P.C.); and *Chandra Dhari Singh* v. *Tipan Prasad Singh*, 43 I.C. 971 (Pat.).

(49) *Chandra Dhari Singh* v. *Tipan Prasad Singh*, 43 I.C. 971 (Pat.).

(50) *Ibid.*

(1) *Kottarathil* v. *Balathil*, 51 I.C. 714=42 Mad. 143=36 M.L.J. 231; and *Lok Nath* v. *Thakurdas*, 71 I.C. 20 (N.-W. F. P.); (Plaintiff decree-holder may only ask, in a suit under O. XXI, R. 63, for a declaration that the property is liable to sale in execution of the decree).

(2) *Din Muhammad* v. *Umadat-Hanraj*, 1931 Lah. 430=133 I.C. 118=32 P.L.R. 201; (The defeated party in a claim petition has a statutory right of suit given to him under O. 21, R. 63, C.P. Code, free from restrictions as to the nature of the suit to be brought); *Mathura Das* v. *Ramraj Singh*, 86 I.C. 233=1925 All. 240 (S. 47, C.P. Code, is no bar to a title-suit by attaching decree-holder).

(3) 16 All. 308 (F.B.).

(4) 43 I.C. 971.

in fact a party to the claim, and being bound by the order passed therein.[5] The judgment-debtor can file suit under O. XXI, R. 63, if the order in claim proceedings is against him.[6]

181. (8) BENAMI TRANSACTIONS.—Where the plaintiff brought a suit praying for a declaration that a certain purchase made in the name of the first defendant was a benami transaction for him (the plaintiff), and for an order that the defendants should execute a conveyance of the property to him, it was held by the BOMBAY HIGH COURT, that the suit was not one for specific performance, but for a declaratory decree where consequential relief was prayed.[7] But, the PUNJAB CHIEF COURT has held, in *Ganeshi Lal* v. *Beni Pershad*,[8] that where plaintiffs claimed a declaration to be the real owners of the decree obtained by certain defendants against others, and for the decree to be transferred to the plaintiffs, the plaint contained a superfluous and unnecessary prayer in the latter part which may be disregarded as a surplusage, and no "further relief" *had* been sought, and the claim was rightly brought on a Rs. 10 stamp, but that it was still for the lower Court to decide whether further relief *could* be sought, and the suit as lodged could not succeed by reason of proviso to S. 42 of the Specific Relief Act.

182. (9) S. 104, BENGAL TENANCY ACT.—It has been held in *Pajiruddin* v. *The Secretary of State*[9] that a suit under S. 104-H of the Bengal Tenancy Act, for a declaration that the plaintiff is an occupancy *raiyat* and not a tenure-holder as he has been entered in the record of rights, and for settling a fair and equitable rent for his holding, is not an ordinary simple declaratory suit under S. 104-H in respect of an individual tenant, and that though it was not necessary to add to a declaratory prayer in the plaint, but a consequential relief had been added and it must be paid for *ad valorem*. This was followed in *Troyloka Nath Pal* v. *The Secretary of State*,[10] where it was held that the provisions of S. 104-H, Sub-S. (4) made it clear that suits of this nature were brought to obtain consequential relief, *viz.*, the settlement of a fair rent, and that where there is specific prayer for such relief, Art. 17 of Sch. II, Cls. (i) and (iii) are not applicable, but that *ad valorem* fees should be paid under S. 7 (iv) (*c*), on the sum at which the plaintiff had valued his suit or the relief sought.[11]

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(5) *See* 16 All. 308 (F.B.); 43 I.C. 971.

(6) *Sahella Appanna* v. *Malidi Appanna*, 25 I.C. 700 (701)=1 M.L.W. 772=16 M.L.T. 300=1914 M.W.N. 833.

(7) *Dada* v. *Nagesh*, 23 Bom. 486 (488, 489).

(8) 9 I.C. 673=1 P.R. 1911=47 P.L.R. 1911=22 P.W.R. 1911 (folld. in *Nihaldevi* v. *Chunnilal*, 73 I.C. 867=1923 Lah. 373=5 L.L.J. 857; and refd. in *Mahabir Prasad* v. *Shyam Behari*, 80 I.C. 655=3 Pat. 795; (Declaratory decree quite sufficient to give full relief to plaintiff other prayer ignored as surplusage).

(9) 17 I.C. 919=16 C.L.J. 383.

(10) 18 I.C. 188=17 C.L.J. 426.

(11) Also see *Shrinath Chandra* v. *Secretary of State*, 5 I.C. 141; (*Held*, that in a suit for settlement of a fair rent by amendment of the

183. S. 105, Bengal Tenancy Act.—By the amendment of S. 105, in 1898 by B.C. Act III of 1898, S. 3 was inserted. It runs as follows:—"Every application under Sub-S. (1) or Sub-S. (2) shall notwithstanding anything contained in the Court-Fees Act, 1879, bear such stamp as the Government of India may, from time to time, prescribe by notification in the Gazette of India." The Government of India issued Notifications 321 S.R., and 322 S.R., dated 19th January, 1899, which say that such applications (in proceedings for settlement of rent) shall bear stamp of eight annas for each tenant. This was in consequence of the Full Bench ruling in *Upadhya Thakur* v. *Persidh*,[12] overruling *Petu Gharai* v. *Ram Khelwan*.[13]

184. Ss. 105 and 105A.—By Notification No. 2254 F: published in the *Gazette of India*, dated 10th August, 1918, Part I, Page 12523, and *Calcutta Gazette*, 1922 Part I, Page 1451, a provision has been made (*a*) for a stamp of 12 annas for each tenant making or joining or joined in the application, and, (*b*) if, at any time during the hearing of the application an issue is raised by the applicant under S. 105-A of the said Act, in addition, a stamp to the amount of an *ad valorem* fee chargeable under Art. 1, Sch. I of the Court-Fees Act, 1870, as amended by Bengal Court-fees (Amendment) Act, 1922, (Act IV of 1922) subject to a maximum of twenty rupees. It has been held in *Sachhidanand* v. *Mahesh Chandra*[14] that on an application under S. 105, Sub-S. (3) of the Bengal Tenancy Act, for a settlement of rent a stamp of eight-annas is to be levied in respect of each *tenancy*, not in respect of each tenant who may be one of a group of tenants holding a particular tenancy. See also Notification No. 1386 L.R., dated 16th April, 1920 of the Government of Assam. Under the provisions of Bihar and Orissa Government Notification Nos. 6422-II, T-33 R; 6423-II, T-33R; 6426 II, T-33 R, dated 10th July, 1926, the Court-fee payable in cases arising out of applications under S. 105-A of the Bengal Tenancy Act, is *ad valorem* subject to a maximum of Rs. 15. The Calcutta High Court, has held in *Gopal Chandra Biswas* v. *Guru Charan*,[15] that in an application under S. 105 (3), Bengal Tenancy Act (VIII of 1885), for settlement of fair rent, with

record of rights, the Court-fee must be determined, in terms of S. 7 of the Act, by the amount at which the relief sought is valued in the plaint, and not at Rs. 10 required for a declaratory decree). This ruling was, however, dissented from in *Satish Chandra* v. *Gopal Chandra*, 7 I.C. 627 =12 C.L.J. 638=15 C.W.N. 110.

(12) 23 Cal. 723 (F.B.); *Held*, that the proceedings under S. 104, Cl. (2), and S. 108, Cl. (2), of B.T. Act (VIII of 1885), cannot properly be regarded as a *suit*, and neither Art. 17, Cl. (vi) of Sch. II, nor S. 7 of the Court-Fees Act, was applicable; and the memorandum of appeal is nothing more or less than an application subject to one Court-fee of eight annas only under Art. 1, Cl. (*b*), Part 2 of Sch. II of the Court-Fees Act.

(13) 18 Cal. 667; *Held*, that a proceeding under Ch. X is a suit, [Overruled in 23 Cal. 723 (F.B.), *supra*].

(14) 79 I.C. 312=50 Cal. 903=1924 Cal. 345=28 C.W.N. 116.

(15) 117 I.C. 701=1929 Cal. 141=32 C.W.N. 1136.

a prayer for declaration of non-mokarrari interest, the Court-fee payable is *ad valorem* under Art. 1, Sch. I of the Court-Fees Act, 1870, as amended by Bengal Court-Fees (Amendment) Act IV of 1922, subject to a maximum of Rs. 20. The notification of the Bengal Government under S. 105, Cl. (iii) of the Bengal Tenancy Act, prescribing for the Court-fee payable in such cases is not *ultra vires*.

185. S. 105B, BENGAL TENANCY ACT.—When any issue is raised under S. 105-A, the party raising it is required to pay in addition to any other Court-fees which he may be liable to pay, such Court-fees as he would have been liable to pay if he had claimed relief under S. 106, of the Bengal Tenancy Act.

186. S. 106, BENGAL TENANCY ACT.—Suits under the provisions of S. 106 of the Bengal Tenancy Act are purely declaratory, for which a fixed Court-fee of Rs. 10 is payable under Art. 7, Cl. (iii), Sch. II of the Court-Fees Act.[16] In *Sailaja Nath* v. *Chandi Charn*,[17] the Calcutta High Court notices the conflict between *Satis Chandra* v. *Gopal Chandra*,[18] *and Chandra Charan* v. *Manoranjan*,[19] and held, following the earlier ruling that a SUIT FOR A DECLARATION THAT THE RECORD OF RIGHTS IS WRONG, is not chargeable with an *ad valorem* Court-fee even where it is transferred to the Civil Court for the purpose of trial. It was observed that the fact that the plaint was badly drawn up did not alter the nature of a suit instituted under the provisions of S. 106 of the Bengal Tenancy Act.[20] The view taken by *Chandi Charan* v. *Manoranjan* (8 I.C. 275) that the remissions of Court-fees, by certain Government Notifications[21] are *ultra vires* would not seem to be good law in view of the later Calcutta case of *Sailaja Nath* v. *Chandi Charn* (48 I.C. 552): *See also* Ch. VI (j) Rr. 85 and 88 of the rules framed by the Government of Bengal: and Notification No. 2576 L.A. 25, Cl. 42 *infra* for Bihar and Orissa. A separate Court-fee of Rs. 10 is required in a suit for correction of rent entry under S. 106 Bengal Tenancy Act, in respect of each class of tenants, and one plaint with one Court-fee is not

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(16) *Satish Chandra* v. *Gopal Chandra*, 7 I.C. 627=12 C.L.J. 638 =15 C.W.N. 110; (Diss. *Srinath Chandra* v. *The Secretary of State*, 5 I.C. 141=11 C.L.J. 158); also see *Chandra Charan* v. *Manoranjan*, 18 I.C. 275=17 C.L.J. 417; (Where it was held that a suit brought under S. 106 of the B. T. Act, which was transferred to the civil Court, and in which there were claimed other reliefs, might be valued on an *ad valorem* basis); *cf.* 48 I.C. 552, f.-n. (20), below.

(17) 48 I.C. 552=28 C.L.J. 301.

(18) 7 I.C. 627, *supra*.

(19) 18 I.C. 275, *supra; see* f.-n. (16), above.

(20) Per Fletcher, J., in 48 I.C. 552 (553)=28 C.L.J. 301.

(21) *See* Notification No. 1897-F., dated 28th March, 1911, published at page 222, Part I of the *Gazette of India*, for Bengal; and Notification No. 311-F., for East Bengal in the *India Gazette*, Part I, page 366; but *see* later Notification No. 3789, L.R., dated 3rd April, 1922, *Calcutta Gazette*, 5th April, 1922, Part I, page 689, which fixed Rs. 20, instead of Rs. 10, as the maximum fee in such cases.

maintainable.[22] However, where the tenants have conspired among themselves, the landlord may be allowed to bring one suit against sets of tenants.[23]

187. S. 111, BENGAL TENANCY ACT.—The proviso to S. III-A of the Bengal Tenancy Act, provides for suits for a declaration of right by any person who is dissatisfied with any entry in or omission from any Record of Rights framed in pursuance of an order made under S. 101 (2) (*d*), concerning a right of which he is in possession. A plaintiff may be granted a relief by a declaratory decree, to remove a cloud thrown over his title, by an entry in record of rights, and it is not necessary for him to bring a suit to set aside the entry in the record of rights, which is null and void.[24] It has been held, however, in *Midnapore Zemindary Company* v. *Secretary of State*,[25] that in a suit instituted under S. 111-A of the Bengal Tenancy Act, the words of the proviso must be strictly applied: and, although a plaintiff claiming to be in possession of an occupancy right, is quite entitled to ask for a declaration of such right, he cannot ask for a declaration that "the entry in the records as to his status as tenure holders is a nullity". A relief so claimed, in addition to the declaration, is for a consequential relief, coming within S. 7, sub-s. (iv), Cl. (*c*), of the Court-Fees Act. To the same effect is a decision in *The Official Trustees of Bengal* v. *Gobarthan Guchait*[26] that a suit for a declaration of rights of the plaintiffs as *Shebaits* of a *Thakur*, and also that an entry in the record of rights is null and void, is a suit for a declaration with a consequential relief, and *ad valorem* Court-fee on the valuation of the plaintiffs, is payable. A contrary view, was taken in *Tewary Kora* v. *Bhupat Mander*, by the PATNA HIGH COURT.[27] It was observed that it was "severe upon the plaintiffs that they should be accused of asking for a consequential relief, when they merely throw in redundant words that the entry in the record of rights is not only wrong, but also that it is not binding on them." Accordingly, it was *held*, that in a suit for a declaration that the plaintiffs were occupancy tenants and not tenure-holders and that the

(22) *Dhakeswar* v. *Harihar*, 22 C.L.J. 57=30 I.C. 862; also see *Chethru Mahato* v. *Khaja Muhammad*, 50 I.C. 328=4 P.L.J. 297; and *Lachhman* v. *Sheikh Abdul*, 51 I.C. 767.

(23) 4 P.L.J. 299; but *see* and *cf*. 9 P.L.T. 199; (*Mahant Ram Narain Gir* v. *Gauri Shanker Lal*, 9 P.L.T. 199).

(24) *Ram Golam* v. *Bishnu*, 11 C.W.N. 48 (50); also see *Agin Bindh* v. *Mohan*, 7 C.W.N. 314 (320)=30 Cal. 20.

(25) 44 Cal. 352=40 I.C. 96=21 C.W.N. 834.

(26) 118 I.C. 357=1929 Notes 7 (a)=33 C.W.N. 231.

(27) 50 I.C. 298=4 Pat. L.J. 302; cf. *Harnarain* v. *Suresh*, 63 I.C. 203; where the Patna High Court, held, in a partition suit, following *Mutsaddi* v. *Habib Mian*, 39 I.C. 579; that the recording of a name in the Record of Rights in respect of a holding amounted to an assertion by the person recorded of hostile title against his co-sharers, giving rise to an adverse possession, and, therefore, in order to succeed in the suit for partition, the plaintiff must clear up his title and possession over the plots recorded adversely to him in Survey Records, and such suits come under S. 7 (4) (*c*) of the Act.

survey entry describing them as tenure-holders was *wrong*, the further prayer for a declaration that the entry was *not binding* on them, was not asking for any consequential relief, and that, therefore, the Court-fee payable was Rs. 10 under Art. 17 (iii) of Sch. II of the Court-Fees Act. The same article would be applicable for purposes of Court-fee on appeal arising out of a claim under S. 111A, Bengal Tenancy Act.

188. S. 149, BENGAL TENANCY ACT.—In *Jagadamba Devi* v. *Protap Ghose*,[28] it was held that a suit by third person, under S. 149 (3) of the Bengal Tenancy Act is not a title suit. Both the learned Judges were agreed in holding this view, though Norris, J., did not feel it necessary to express an opinion as to the nature of the suit, which *Tottenham, J.*, observed, was "in the nature of an injunction under the Specific Relief Act, or else of a declaratory suit." This ruling was explained by Sir Comer Petheram, C.J., in *Rubiun Neosa* v. *Gooljan Bibee*,[29] as not determining that no suit brought under such circumstances can be a title-suit. "The object of S. 149 was to prevent tenants being harassed where disputes arise between rival claimants to the land in respect of which the rent is due, and consequently whether the dispute between such parties is a dispute as to title, or a dispute as to possession only, they are at liberty to have that tried, and in the suit in which that is being tried to obtain the injunction which is mentioned in Sub-S. 3 of S. 149 of the Bengal Tenancy Act."

189. (10) CANCELLATION OF CERTIFICATE.—It was held, in *Mokboda Dossee* v. *Nobin Chunder Mitter*,[30] that a suit to establish plaintiff's right as the heir of her deceased son, and TO SET ASIDE A CERTIFICATE under Act xxvii of 1860, granted jointly to her as well as to the defendant, with a view to being permitted to draw interest on Government promissory notes belonging to the estate of the deceased, involving prayer for the cancellation of a summary order, was for a declaration of right, with consequential relief to follow the declaratory decree sought, and a Court-fee of Rs. 10 prescribed by Art. 17 (iii), Sch. II was not sufficient for the plaint.

190. (11) CANCELLATION OF DECREES.—The cases arising for cancellation of decrees, are mainly those where the suit is to set aside decrees as fraudulent, and to avoid their affecting a party to the decree, or a person who is represented or deemed to have been represented in the proceedings terminating in a decree. The plaintiff may be wanting to have the decree set aside, or declared null and void as against himself, or he may be wanting to get rid of the sales thereunder. The question which generally arises in all these cases is, whether a decree is a nullity, which may be treated as non-existent

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(28) 14 Cal. 537.
(29) 17 Cal. 829 (830).
(30) 16 W.R. 259.

so far as the plaintiff is concerned, or is it *prima facie* binding on him, which it is absolutely necessary for him to get set aside, to avoid its consequences. A decree may be avoided, wholly or in part. A bare declaration of invalidity would generally suffice when the plaintiff was neither a party to the proceedings resulting in the suit, nor duly represented therein, so as to be directly, or indirectly affected by the decree. But where plaintiff cannot get full redress claimed, without avoiding a decree, the prayer for mere declaration without consequential relief will not be sufficient.

191. Allahabad.—In *Dambar Lal* v. *Chand Mal*,[31] it has been held, by the ALLAHABAD HIGH COURT, that a relief for cancellation of a decree is not a declaratory relief only. The effect is to render the decree void and incapable of execution, and to free the plaintiff from all further liability under it. But the case is held to fall under Art. Sch. I. Art. I and Court-fee is payable on the value of the final decree only. Also see *Radha Kishen* v. *Ram Narain*[32]. But in *Lakshmi Narain Rai* v. *Dip Narain*, where the plaintiff sued for a declaration that a decree was null and void, and that he was the Manager of the property in suit, it was held that the suit was merely for two declarations without consequential relief.[33]

192. Bombay and Calcutta.—Relying upon *Shrimant Sagaji Rao* v. *Smith*,[34] the Calcutta High Court has also held in *Zinnatunnessa* v. *Girindra Nath*,[35] that a suit in which *the only prayer* is to have it declared that a certain decree is ineffectual and inoperative against the plaintiffs, is a suit for a declaratory decree without consequential relief, and falls within Sch. II, Art. 17 (iii), and not under S. (iv) (*c*) of the Act.

193. Lahore.—It has been held by the Lahore High Court, that where a partition decree, capable of execution, had been passed, a suit by plaintiff for a mere declaration that the decree was based on fraud, and shall not affect his rights, was not competent, unless followed up by a prayer for a consequential relief by injunction or otherwise.[36] The view taken by the MADRAS FULL BENCH DECISION in *Arunachellam Chetty* v. *Rangaswami Pillai*,[37]

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(31) 1932 All. 485=139 I.C. 32=54 All. 812=1932 A.L.J. 684 (F.B.).

(32) 1931 All. 369=131 I.C. 604=53 All. 552.

(33) 1933 All. 350=1933 A.L.J. 311.

(34) 20 Bom. 736.

(35) 30 Cal. 788; but *cf. Deokali Koer* v. *Kedarnath*, 39 Cal. 704=15 I.C. 427=16 C.W.N. 838.

(36) *Bua Ditta* v. *Ladhamal*, 54 I.C. 833.

(37) 28 I.C. 79=38 Mad. 922=28 M.I.J. 118=17 M.L.T. 164 =1915 M.W.N. 118; also see *Harnam Singh* v. *Hayat*, 86 I.C. 680=1925 Lah. 346; where the minor's guardian having confessed judgment, the minor brought a suit for declaration that the decree passed in the mortgage-suit did not bind him, and prayed that the former suit be restarted from the point at which his mother had confessed judgment. *Held*, that the suit was one for declaration with consequential relief, within the provisions of S. 7 (iv) (*c*) of the Court-Fees Act. Cf. *Nibal Devi* v.

was followed, where it was remarked that a decree declaring that a previous decree is not binding on the plaintiff had the effect of cancellation of the decree, and did not bear the appearance of a mere declaratory decree, although the case might be different where a declaration was sought by a person who was not a party to the decree impugned. In a case like that the suit might properly be regarded as one for declaration only, but in other cases where the plaintiff seeks for consequential relief it was more properly a suit to get rid of an already existing obligation.

194. The case of *Amin Chand* v. *Sant Murlidhar*,[38] decided by the Punjab Chief Court, was a case of the description where plaintiff was not a party to the suit in which the defendant had obtained his decree, on the basis of a sale-deed, and it was held that it was not necessary for the plaintiff to have the decree set aside as the plaintiff could regard it as a nullity. Similarly in the case of *Meha Devi* v. *Chuni Lal*,[39] the Lahore High Court held, that the plaintiffs not being parties to the decree obtained by the defendants on his mortgage, it was not incumbent on them to ask for an injunction prohibiting the defendant from executing the decree. In *Hakim Rai* v. *Ishar das Gorakh Rai*.[40] the *Lahore* High Court followed the CALCUTTA CASE *Deokali* v. *Kedar Nath*,[41] and the Madras Full Bench decision in *Arunachalam* v. *Rangasami Pillai*,[42] and held that a suit for a declaration that a decree obtained by the defendants against the plaintiffs is based on fraud, and deception, and is not enforceable is a suit for a declaration with consequential relief within the meaning of S. 7 (iv) (*c*), *Court-Fees Act*. In *Bindraban* v. *Punjab National Bank*,[43] the plaintiff brought an action which amounted to a suit to set aside the decree obtained by the Bank against him. Sir Shadi Lal, C.J., observed, that "there can be no doubt that, in order to determine whether a suit is purely for a declaratory decree and does not involve any consequential relief, the Court has to look at the substance, and not merely at the language, of the plaint. The plaintiff's object in bringing the present suit is to get rid of the decree passed against him in the previous suit, and, whether the suit should be treated as a suit involving a prayer for an injunction restraining the decree-holder from executing the decree, or as one involving a prayer for setting aside that decree, the plaint must bear an *ad valorem* Court-fee." It was added that "the point is concluded by a judgment" of this

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Chuni Lal, 73 I.C. 767=1923 Lah. 373—Suit for declaration by non-party to a decree to have the decree declared void, is maintainable without consequential relief.

(38) 19 I.C. 219=18 P.R. 1913; 151 P.W.R. 1913; 211 P.L.R. 1913.

(39) 73 I.C. 767=1923 Lah. 373=5 L.L.J. 357.

(40) 102 I.C. 46=1927 Lah. 499=8 Lah. 531=9 L.L.J. 400.

(41) 39 Cal. 704=15 I.C. 427=16 C.W.N. 838.

(42) 28 I.C. 79=38 Mad. 922 (F.B.), *supra*.

(43) 1929 Lah. 463=116 I.C. 895=30 P.L.R. 176.

Court *Hakim Rai* v. *Ishardas-Gorakhrai,*[44] and of the Madras High Court in *Arunachellam Chetty* v. *Rangaswamy Pillai,*"[45] Recently, in *Jhanda Singh* v. *Gulabmal Bhagwandas,*[46] Tekchand,J., has again held, on a review of the authorities, that "it is settled law that a suit for declaration that a decree is not binding on the plaintiff and for an injunction restraining the defendant from executing the decree, is a suit to obtain a declaratory decree where consequential relief is prayed, and falls under S. 7 (iv) (*c*) Court Fees Act, according to which the value of the suit for computation of Court-fee is the amount at which the relief sought is valued in the plaint," adding that the plaintiff can fix any value he likes, and the Court have no power to reverse it, in accordance with law laid down in the Full Benches of the Punjab, Allahabad and Madras Courts, and approved by the Judicial Committee.

195. **MADRAS DECISIONS.**—The Full Bench decision of Madras High Court, in *Arunachellam Chetty* v. *Rangaswamy Pillai,*[47] is a leading authority on the point. Following two earlier cases in the same Court, *viz., Chingacham* v. *Chingacham*[48] and in *Malika* v. *Kunji Achammal,*[49] and some other Bombay, and Calcutta cases, the Madras Full Bench held that a suit for a declaration that a decree passed against the plaintiff for a debt is not binding on him, is not a mere declaratory suit, but is one with a consequential relief falling under S. 7 (iv) (*c*) of the Court-Fees Act. This has been followed by the Lahore High Court,[50] and by the Judicial Commissioner Oudh.[1] In *Rajagopala Naidu* v. *Vijaya Raghavalu,*[2] where plaintiffs sued for (1) a declaration that a certain decree was of no legal effect, and (2) possession of certain properties sold in execution of the decree, the two prayers were held inseparable, as possession was not asked for on any other ground than that the decree in execution of which it was lost, should be declared invalid; and treating both together, the suit was one asking for consequential relief on the grant of declaration.[2] Both these above-mentioned Madras authorities are referred to in

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(44) 102 I.C. 46=1927 Lah. 499=8 Lah. 531, [f.-n. (40)]; see also *Sri Krishan Das* v. *Sat Narain,* 1932 Lah. 132=135 I.C. 499=13 Lah. 391 =32 P.L.R. 729. (*Held,* that the question seems to have been definitely settled, as far as this Court is concerned.)

(45) (1915) 38 Mad. 922=28 I.C. 79=28 M.L.J. 118 (F.B.).

(46) 1933 Lah. 246.

(47) 28 I.C. 79=38 Mad. 900 (F.B.), *supra,* followed in *Pilla Kakkadu* v. *Vedula Chendrayya,* 51 I.C. 536=1918 M.W.N. 562=24 M.L.T. 254. (*Held,* that a suit for a declaration that a decree is not binding as having been obtained by fraud comes within S. 7 (iv) (*c*) of the Court-Fee Act, and the Court-fee payable thereon is an *ad valorem* fee on the value at which the suit is valued in the plaint.)

(48) 30 Mad. 18=1 M.L.T. 412.

(49) 5 I.C. 927=20 M.L.J. 791=7 M.L.T. 177.

(50) *Hakimrai* v. *Ishardas Gorakhrai,* 102 I.C. 46=1927 Lah. 499.

(1) *Sripal Singh* v. *Jagdish Narayan,* 65 I.C. 980 (981)=1921 Oudh 217.

(2) 25 I.C. 683=1 L.W. 824.

the recent case of *Venkatasiva Rao* v. *Venkata Narasimha*,[3] in which Reilly, J., held that a suit for setting aside a decree, is a suit for "*cancellation*" of that decree, within the meaning of the new S. 7 (iv-A), Court-Fees Act. It covers suits for cancellation of decrees, however described, for money or other property having a money-value. The new sub-section is a specific provision which would take such cases out of the general class in which the previously came. The other learned Judge (Anantakrishna Ayyar, J.), agreed, observing that prior to the enactment of the Madras Court-Fees Act, V of 1922, a suit for setting aside or cancelling a decree was held to come under S. 7 (iv) (*c*) for purposes of Court-fee. Now, the Legislature has specifically provided for suits for cancellation of decrees for money or property having a money value, which has to be given effect to; hence, after 1922 a suit to cancel a decree (which is the same as a suit to set aside a decree) would no longer be governed by S. 7 (iv) (*c*).[4]

196. Nagpur.—The Nagpur Court has held in *Baldeo Prasad* v. *Ghasi Ram*, that, a suit to set aside a decree on the ground of fraud falls under S. 7 (iv) (*c*), of the Court-Fees Act, and *ad valorem* Court-fees must be paid on the value set on the claim for purposes of jurisdiction.[5] Similarly, it was held in *Govind* v. *Dheklu*, that a prayer to set aside a decree is not of a declaratory nature, but is one both a declaration and consequential relief, and is governed by clause (iv) (*c*) of S. 7, Court-Fees Act.[6] In *Pandarinath Krishna* v. *Maroti Ganesh*,[7] where plaintiff alleged that first defendant had obtained a decree against second defendant fraudulently, and asked the Court to grant an injunction restraining the defendant from executing his decree against the common judgment-debtor, or his property, that the effect of the consequential relief claimed by the plaintiff would be to wipe off completely the liability of defendant 2, and his property for the satisfaction of the decree obtained by defendant 1 against defendant 2. The clause applied was S. 7 (iv) (*c*) of the Court-Fees Act, though the Court held that the plaintiff could not put an arbitrary value of Rs. 5 only below the real value of the relief to plaintiff himself.

197. Oudh.—The Oudh Judicial Commissioner's Court has held, that where it was necessary for the plaintiff to get a declaration about the decrees not being binding on him before he could

(3) 1932 Mad. 605=139 I.C. 317=63 M.L.J. 764=36 M.L.W. 225 =1932 M.W.N. 992.

(4) Per Anantakrishna Aiyar, J., in 1932 Mad. 605 (610-612); also see *Secretary of State* v. *Lakhanna*, 1933 Mad. 430; where the plaintiff prayed for declaration that the decree in question was not binding upon his share of property, that is, in form for a declaratory relief, but in truth for cancellation of that part of the decree which affected him. The relief though worded as to bring the case within S. 7 (iv) (*c*), was held to come under S. 7 (iv-*A*), of the Court-Fees Act.

(5) 56 I.C. 360=16 N.L.R. 84.

(6) 56 I.C. 550 (Nag.).

(7) 1933 Nag. 214.

get his relief for possession, the principal relief was declaration, with consequential prayer for possession, and Court-fee was to be paid on valuation put in plaint[8]

198. **(12) CANCELLATION OF DEEDS.—Preliminary observations.**—Allied to the question of cancellation of decrees, is the question of cancellation of previous deeds: and, the important point here also is about the same, whether the deed sought to be cancelled, so as not to affect plaintiff's rights, title or interest was executed by some-other party, who represents, or is deemed to represent the plaintiff; or, whether it was executed by plaintiff himself: and, in this connection, it has also to be noticed, under the facts and circumstances of each case, whether the relief sought by plaintiff in connection with the cancellation of a document on the ground of fraud, misrepresentation, undue influence, want of consideration, etc., is absolutely necessary for the success of his other relief claimed in the plaint, or whether the document, etc., is an absolute nullity in law, which would enable the plaintiff to ignore it altogether, and make its cancellation or setting aside quite unnecessary for him.

199. Where two reliefs, one by way of declaration, of title and the other apparently by way of cancellation of deed are asked, it may be that the two reliefs, are as a matter of fact, but one relief, or one relief is a surplusage inasmuch as it is bound to follow on the granting of the other: the case falls under S. 7 (iv) (*c*) only if the two reliefs are separate and necessary for the granting of full relief to the plaintiff; and, if plaintiff has, expressly, or by necessary implication claimed both these reliefs in his plaint.

200. **CONSEQUENTIAL RELIEF IMPLIED OR INVOLVED IN CANCELLATION OF A DEED.**—In *Chuni Lal* v. *Bodar Mal*,[9] where the defendant executed a mortgage in favour of the plaintiffs and also covenanted with him not to alienate the property till his debt was discharged, but subsequently in contravention of the agreement he mortgaged the property to *C*, and the plaintiff sued for a declaration that the mortgage in favour of *C* was invalid, the PUNJAB CHIEF COURT held that the prayer for the cancellation of the mortgage to *C* was one for consequential relief within the meaning of S. 7, Cl. (iv) (*c*), of the Court-Fees Act, and that the plaintiff must therefore value the same, accordingly. In *Chinnamal* v. *Madarsa Rowther*,[10] the suit was for the cancellation and delivery up of a mortgage bond, executed in defendant's favour, for which it was alleged, no consideration had been paid by the defendant. The Madras High Court held that the suit fell under S. 7, Paragraph IV (*c*) of the Court-Fees Act. The PUNJAB CHIEF COURT has also held that a suit for cancellation of a will, falls under S. 7, Paragraph iv, Cl. (*c*) of the Court-Fees Act. During the lifetime of a testator only a declaratory suit can lie in

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(8) 1930 Oudh 104.
(9) 2 P.R. 1886.
(10) 27 Mad. 480.

respect of his will, but after his death the will loses its ambulatory character, and becomes operative, so that a person seeking to avoid it must sue for its cancellations.[11] The NAGPUR JUDICIAL COMMISSIONER'S COURT, has held in *Baburao* v. *Balaji Rao*,[12] that where the plaint as framed does not ask for a mere declaration of title to any right over property, under S. 42, Specific Relief Act, but it asks for a declaration taht the registered document, in question, does not affect plaintiff's title, the claim is clearly made under the provisions of S. 39, Specific Relief Act, which allows a person to have a written document adjudged void or voidable against him: that this prayer involves or implies the consequential relief that the Court should adjudge the document void and order it to be delivered up and cancelled, except in the contingency mentioned in S. 40. But see and compare the observations of *Niamatullah, J.*, in *Mahomed Ismail* v. *Liagat Hussain*.[13]

201. SPECIFIC RELIEF ACT, S. 39.—The Specific Relief Act, deals in Ch. V., with the "cancellation of Instruments." S. 39 of the Specific Relief Act, provides for "when cancellation may be ordered." The section enacts, that "any person against whom a written instrument is *void*, or *voidable*, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, *may sue to have it adjudged void or voidable*; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled." To entitle a plaintiff to a decree, under this section, for cancellation of an instrument, the first requisite is that the instrument is void or voidable; secondly, apprehension of serious injury being caused to the plaintiff if the instrument is left outstanding; and, lastly, that the Court may in its discretion grant the relief prayed, and order the instrument in question to be delivered up and cancelled. Thus, looking to the first essential requirement, it is plain that the relief by way of cancellation is open both when a person is a party to the instrument, or is otherwise prejudicially affected by it, but can urge that the instrument is either void, or voidable against him.[14] A case of partial cancellation is provided for in S. 40 of the Specific Relief Act.

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(11) *Hukam Singh* v. *Gyan Devi*, 36 I.C. 95; following 109 P.R. 1893 (*Hakim* v. *Maktah Kour*).

(12) 1929 Nag. 71=118 I.C. 465=25 N.L.R. 52.

(13) *Cf*. 1932 All. 16=140 I.C. 191=1932 A.L.J. 165. (*Held*, that the question of Court-fees must be determined with reference to the plaint as it is, and not as it ought to have been. The Court has no right to say that the plaintiff should have asked for consequential relief, and that not having done so, he should be deemed to have claimed the consequential relief, and is, therefore, liable to pay the Court-fee. Where no consequential relief was prayed, the plaintiff need pay Court-fee only on the declaration, and not on the consequential relief which he ought to have claimed.)

(14) *Ishwar* v. *Dewar*, 27 Bom. 146; (A creditor may sue on behalf of himself and all other creditors to set aside a deed executed by his debtor by which the creditors are defrauded, delayed, or defeated within the meaning of S. 53, Transfer of Property Act).

202. VOID: OR VOIDABLE.—A document which is null and void *ab initio* does not require to be set aside.[15] If a person not having authority to execute a deed, or having such authority under certain circumstances which did not exist, executes a deed, it is not necessary for persons who are not bound by it to sue to set it aside, for it cannot be used against them. They may treat it as non-existent, and sue for their right as if it did not exist.[16] For example, where the plaintiff was seeking to recover property alienated by their late Karnavan, who was not authorized to make it, the prayer for cancellation of the kanon document was not an essential part of the plaintiff's relief.[17] A suit for a declaration that transaction embodied in a particular deed was from its inception a sham transaction, is to be distinguished from a suit for cancellation of the deed.[18] A person may rely on the invalidity of a void instrument as against himself without suing for its cancellation; and a suit by him for declaring the invalidity of such instrument will not be a suit for declaration and consequential relief under S. 7, Paragraph IV, Cl. (*c*) of the Court-Fees Act. It will be otherwise where the party cannot impeach the arrangement effected by the deed without having it cancelled.[19] A document which was never intended by the executant to be operative does not require to be set aside or cancelled in order to entitle any person to the possession of the property covered by it as against the person in whose favour it stands.[20] A voidable contract, is valid until it is avoided , or specifically set aside. The executant of a document cannot obtain his title to the property conveyed by the instrument, unless and until he first gets the deed set aside.[21] If an instrument is not void, but is only voidable, the executant might assent to it, and treat it as valid, or he might sue for its cancellation. It has been held by the BOMBAY HIGH COURT, in *Anandappa* v. *Totappa*[22] that "whether a plaintiff must sue for cancellation of a document under which the defendant in possession claims, depends upon whether the onus of proving circumstances establishing its invalidity lies upon him or whether it lies upon the defendant to prove circumstances establishing its validity." Where plaintiff seeks to recover property conveyed, under a document executed by the plaintiff, or one under whom he claims, the plaintiff is under a necessity to have the instrument cancelled, or

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(15) *Unni* v. *Kunchi Amma*, (1891) 14 Mad. 26; *Jagardeo* v. *Phuljhari*, (1908) 30 All. 375; *Banku Behari* v. *Kristo Gobindo*, (1903) 30 Cal. 433; see also *Rai Kishori* v. *Debendranath*, (1881) I.R. 15 I.A. 38 (49-50)=15 Cal. 409 (421).

(16) 14 Mad. 26, *supra*.

(17) 14 Mad. 26, *supra*; also see *Chingacham* v. *Chingacham*, 30 Mad. 18=1 M.L.T. 412.

(18) 30 All. 375=1908 A.W.N. 156=5 A.L.J. 421.

(19) *Chingacham Vittil Sankaran Nair* v. *Chingacham Vittil Gopala Menon*, 30 Mad. 18=1 M.L.T. 412.

(20) *Shamlal Mitra* v. *Amarendra Nath*, 23 Cal. 460; *Raghubar Dyal Saku* v. *Bhikya Lal Misser*, 12 Cal. 69; *Banku Behari* v. *Krishto Gobindo*, 30 Cal. 433 (438).

(21) *Panna Bibi* v. *Habiba*, 6 I.C. 891 (All.).

(22) 33 I.C. 441=17 Bom. L.R. 1137, note.

set aside; while, if the defendant has acquired property under a deed executed by some one having a power of disposal under certain circumstances on behalf of the real owner, the burden lies on the defendant to prove the existence of validating circumstances.[23] "Such are the cases of a guardian of a minor, the Manager of a Hindu family, or the sonless widow in a divided Hindu family."[24]

203. CONFLICTING VIEWS OF DIFFERENT HIGH COURTS.—The CALCUTTA DECISIONS, prior to the enactment of the Specific Relief Act, are to the effect that in SUITS TO SET ASIDE DEEDS, ON THE GROUND OF FRAUD OR FORGERY, a prayer for a consequential relief of the cancellation of the instrument was necessary.[25] Where a *purdanashin* lady (the plaintiff in the case) asked that the deed alleged to be executed by her, but not in fact executed by her, be set aside as not genuine, and also for confirmation of possession, it was held, by their Lordships of the Privy Council, that the prayer for setting aside the deed is a prayer for substantial relief, and Courts of Justice are not justified in substituting, therefor, a mere declaration of plaintiff's title.[26] And, it was stated by Couch, C.J., in *Joy Narain* v. *Grish Chunder*, that "where a plaintiff asks to have a deed or will set aside, there is a prayer for substantial relief".[27] But in *Umarannessa Bibi* v. *Januranessa Bibi*, the CALCUTTA HIGH COURT has held that where a person is induced to execute a deed other than what she intended to execute, the document is null and void, and need not be set aside; therefore, in a suit to set aside such a document if the plaintiff (a purdanashin lady) alleges that she is still in possession of the disputed property, all she is required to ask at the time of suit, is a declaration that the deed in favour of the defendant is not her deed, and a Court-fee of Rs. 10 would suffice.[28] A suit wherein the plaintiff claimed among other prayers, a CANCELLATION OF A PREVIOUS DEED OF PARTITION, was, however, held to fall under S. 7 (iv) (*c*) of the Court-Fees Act.[29] In *Mahomed Masik* v. *Malkai Ugwa*, where the plaintiff had succeeded in getting a TRUST-DEED executed by her set aside, with an order for recovery of a sum of Rs. 2½ lacs handed over by her to defendant, on defendant's appeal, the High Court ordered that the memorandum of appeal, should have like the plaint, borne a Court-fee stamps *ad valorem* on 2½ lacs.[30]

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(23) *Hari Har* v. *Dasarthi Misra*, 33 Cal. 257=9 C.W.N. 666=1 C.L.J. 408.

(24) *Unni* v. *Kunchi Amma*, 14 Mad. 26.

(25) *Taccordin* v. *Ali Hussain*, 21 W.R. 340=13 Bom. L.R. 427 (P.C.); *Joy Narain* v. *Girish Chander*, 22 W.R. 438=15 Bom. L.R. 170.

(26) *Taccoordeen* v. *Syed Ali*, 21 W.R. 340=13 Bom. L.R. 427=1 I.A. 192 (P.C.).

(27) 22 W.R. 438.

(28) 37 C.L.J. 499.

(29) *Satish Chandra* v. *Kali Dasi*, 34 C.L.J. 529=26 C.W.N. 177.

(30) 10 Cal. 380.

204. Allahabad and Bombay—The ALLAHABAD FULL BENCH has held in *Karam Khan* v. *Daryai Singh*,[31] that a suit for the cancellation of an instrument executed by a third party in respect of property to which the plaintiff is entitled, is one for a declaratory decree, of the kind mentioned in S. 39 of the Specific Relief Act, and not seeking any consequential relief. It does not, therefore, fall under S. 7 (iv) (*c*) of the Court-Fees Act. The Privy Council decision in *Taccoordeen* v. *Ali Hussain*,[32] was noticed as having been passed before S. 39 of the Specific Relief Act was passed. The BOMBAY HIGH COURT followed it in *Sagajirao* v. *Smith*,[33] observing that the suit as brought, was analogous to one under S. 39 of the Specific Relief Act, merely to have the decree adjudged void, leaving it to Court to do what it likes with his decree, if the decree is so adjudged void: it may be that a mere declaration will effect all that the plaintiff wants. But, in *Parvatibai* v. *Vishvanath*,[34] the Allahabad decision in *Karam Khan* v. *Dargai Singh*,[35] was dissented from. Where the plaintiff having sued for the cancellation of a sale-deed framed the prayer in the plaint so as to seek a declaration that the sale-deed was fraudulent, and for an order to have it cancelled and a copy sent to the Sub-Registrar as provided by S. 39 of the Specific Relief Act, it was held by the Bombay High Court, that the suit was one for a declaration with a distinct prayer for consequential relief falling within S. 7 (iv) (*c*) of the Court-Fees Act, and must be valued accordingly.[36]

205. MADRAS HIGH COURT.—The Madras High Court have differed from the Allahabad view in several reported cases. The earliest case decided by the Madras High Court is reported in *Narayana Putter* v. *Aya Putter*.[37] In that case the plaintiff had executed a document whereby he created a charge on certain immoveable property and a suit was brought to cancel that document. It was held, by the High Court, that as the plaintiff in that suit had executed a document of legal validity, creating a certain charge, the cancellation of that document was a relief of a very substantial description, and very far from being a mere declaration. It was a suit, in their opinion, really to get rid of a charge, and for the removal of a burden legally created.[38] In *Parathay* v. *Sankumani*,[39] where the plaintiff had executed an agreement to sell certain property, in discharge of mortgages executed on his behalf during his minority, and he subsequently brought a suit alleging that the agreement had been extorted

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(31) 5 All. 331.
(32) 21 W.R. 340 (P.C.).
(33) 20 Bom. 736.
(34) 29 Bom. 207.
(35) 5 All. 331.
(36) 29 Bom. 207=6 Bom. L.R. 1125.
(37) 7 M.H.C.R. 372.
(38) 7 M.H.C.R. 372 (374); cited in *Arunachellam* v. *Rangasamy*, 28 I.C. 79=38 Mad. 922 (F.B.).
(39) 15 Mad. 294.

from him, and prayed for a declaration that the agreement was not binding on him, and for any other reasonable relief, the Court held that the plaintiff was bound to pay Court-fees upon the value of the interest in the document sought to be invalidated. In *Samiya Mavali* v. *Minnamal*, where S. 7 (iv) (*c*) was applied to a suit for declaring a sale-deed invalid on the ground that it had been obtained by fraud, coercion, undue influence, and without consideration, the two earlier decisions of the same Court, cited above, were noticed with apparent approval.[40] But, in *Chinnamal* v. *Madarsa Rowther*,[41] where the suit was for cancellation and delivery of a mortgage-deed, the decision was entirely opposed to those in 7 Madras High Court Reports, as in 15 Madras 94. The suit was held to be a suit for a declaratory decree with consequential relief under S. 7, Para. iv (*c*). In *Chingachan* v. *Chingachan*,[42] where the suit was held to be a merely declaratory suit not involving consequential relief, the Court at the same time expressed the opinion that where it was incumbent on the plaintiff to get the document set aside before he could question it, it must be treated as involving a prayer for consequential relief, and the provisions of clause 4 (*c*) would be applicable. This was followed in a later case, *Malika Meladathil* v. *Kunji Achammal*.[43] The suit was brought by 25 persons, out of whom a large number were parties to a sale-deed regarding which a declaration of invalidity was sought. The High Court held that *ad valorem* Court-fee must be paid, as the declaration, if given would involve the cancellation of the deed so far as the plaintiffs who were parties to the deed were concerned. The Madras Full Bench decision in *Arunachellam* v. *Rangasamy Pillai*,[44] fully reviews and discusses these authorities, and was of opinion that "a suit in which the plaintiff in terms prays for a declaratory decree, and consequential relief, *prima facie* comes within clause (iv), sub-clause (*c*) of S. 7 of the Court-Fees Act, but if at the same time it comes within any of the other classes of suits specified in the section, it must be treated as a suit of that description and dealt with accordingly". It was held, therefore, that a suit for a declaration that an instrument of mortgage or sale executed by the plaintiff, "which merely asks for a declaration is nonetheless a suit for a declaratory decree with consequential relief within the meaning of clause (iv) (*c*)". In *Vellora Karuppan* v. *Kallur Vengazel*,[45] where the suit prayed for the cancellation of a *samudayam* deed to which the plaintiff was not a party, the High Court held that the suit was in substance, a suit for a declaration that the deed is not binding on the *devaswom*, and if an injunction and accounts are also asked for as relief, consequential on such a declaration, S. 7 (iv) (*c*)

(40) *Samiya Mavli* v. *Minna Mal*, 23 Mad. 490; citing 7 M.H.C.R. 372; and 15 Mad. 294.

(41) 27 Mad. 480=14 M.L.J. 343.

(42) 30 Mad. 18=1 M.L.T. 412.

(43) 5 I.C. 927=20 M.L.J. 791=7 M.L.T. 177.

(44) 28 I.C. 79=38 Mad. 922 (F.B.).

(45) 78 I.C. 118=1924 Mad. 611.

would apply. In *Kattiya Pillai* v. *Ramaswamia Pillai*,[46] the High Court had to consider the question of Court-fees in a suit praying to declare a will to be forgery, to have it cancelled, and to have Sub-Registrar's order also cancelled, and it was held having regard to the substance of the thing, and not the mere form in which the relief had been prayed for, that in regard to Court-fee payable the provision applicable to the case was not S. 7 (iv-*A*) or S. 7 (iv) (*c*), but Sch. II, Cl. (17-*A*) (1), because the suit must be treated as one for declaration without consequential relief. The rulings in *C. V. Sunkaran Nair* v. *C. V. Gopal Menon*[47] and *Venkataramani* v. *Narayanaswami*, were followed.[48] The principle followed was that "where a plaintiff is bound to ask for a declaration, and the setting aside of a document but prays merely for declaration, the suit must be treated, *for purposes of Court-fees*, as one for a declaration: and it is not for the Court to say that the plaintiff should have framed his plaint differently".[49] It was further observed, that "in a suit properly framed under S. 39 for declaring a will to be a forgery the cancellation of the will, and the cancellation of the order of the Sub-Registrar registering it, is the function of the Court, and not part of the prayer in the plaint".[50] Reilly, J., in the same case, explained that "if the suit could have been brought legally for the declaration alone, then it is clear that those further reliefs, even if they could be prayed for, would not be consequential reliefs within the meaning of S. 7 (iv) (*c*). If they were consequential reliefs within that meaning, then it is obvious that S. 42 of the Specific Relief Act would be a bar to the suit being brought for a declaration alone as it clearly could be. Therefore, whether the plaintiffs have put in those prayers for additional reliefs or not makes no difference". The suit is essentially, a suit for a declaration alone", that being so, it must come under Art. 17 (A-I), Sch. II, Court-Fees Act.[1] In *Koraga Gowdo* v. *Somappa*, it was held that where declarations sought were only ancillary to the prayer for possession, and such a case is governed by S. 7 (iv) (*c*), Court-Fees Act, as to which the Madras Amendment applies, the value for Court-fee is one-half of the immovable property affected by the declaration, valued as provided by S. 7 (v).[2]

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(46) 1929 Mad. 396=119 I.C. 35=56 M.L.J. 394=29 M.L.W. 584 =1929 M.W.N. 286.

(47) 30 Mad. 18=1 M.L.T. 412.

(48) 1925 Mad. 713=87 I.C. 660=48 M.L.J. 688=21 M.L.W. 649 =1925 M.W.N. 276.

(49) *Cf.* In re *Lakshmi Ammal*, 91 I.C. 729=1926 Mad. 96; (Suit by vendee for setting aside a sale-deed, praying for return of consideration and damages, *held*, to fall under S. 7 (iv) (*c*); and *Thangachi Ammal* v. *Mohammad Moiddeen*, 1933 Mad. 231 (2); (Suit by vendor for setting aside a sale-deed, and for recovery of possession—Court-fee required only on the cancellation, and not on relief for possession).

(50) Per Venkatasubba Rao, J., in 1929 Mad. 396, *supra*.

(1) Per Reilly, J., in 1929 Mad. 396 (399), *supra*.

(2) 1933 Mad. 93.

206. **OTHER HIGH COURTS**—(a) **Gifts.**—It was held by the PATNA HIGH COURT in *Noowoogar Ojain* v. *Shidhar Jha*,[3] that a plaintiff suing under Ch. V of the Specific Relief Act, is not entitled to reduce the Court-fees payable thereon by an assertion that it falls under Ch. VI. The same view was taken by the ALLAHABAD HIGH COURT in *Gangadei* v. *Sukhdeo Prasad*.[4] It was held, that the relief claimed being a declaration that the deed of gift is invalid against her with consequential relief of possession of the property conveyed by the deed, the fee was payable under S. 7 (iv) (*c*).

207. **(b) MORTGAGES.**—The Punjab Chief Court held in *Chuni Lal* v. *Bodar Mal*,[5] that a suit for declaration that a mortgage by the debtor, in contravention of his agreement was invalid, involved a prayer for cancellation of the mortgage as a consequential relief within the meaning of S. 7, Cl. (iv) (*c*) of the Court-Fees Act: and, in *Devi Das* v. *Ramlal*,[6] where a minor had sued for declaration that a mortgage-deed executed in his name by his guardian was invalid against him, praying for cancellation of the deed and for injunction restraining the defendant from enforcing the terms of the deed, the Nagpur Judicial Commissioner's Court *held* that the suit as brought was covered by S. 7, Para. IV (*c*), and (*d*) of the Act. But, in *Shamdas* v. *Charudas*,[7] the LAHORE HIGH COURT, held that a suit by a co-parcener in a joint Hindu family for a declaration that a mortgage of joint-family property effected by another co-parcener shall not be binding on the property mortgaged is not a suit for the cancellation of the mortgage, but a mere suit for a declaration falling under Art. 17 (3) of Sch. II, to the Court-Fees Act, and does not require an *ad valorem* stamp.

208. **(c) RELEASE-DEED.**—A suit for cancellation of a deed of release (*Faraghkhati*), involves a consequential relief, and the plaintiff, in a suit under S. 39, Specific Relief Act, is to pay *ad valorem* Court-fee on the value of his relief in the plaint.[8]

209. **(d) SALE-DEEDS.**—The ALLAHABAD HIGH COURT, held in *Panna Bibi* v. *Habiba*[9] that the executant of a sale-deed cannot obtain a declaration of his title to the property, sold. unless and until he first gets the sale-deed set aside. The UPPER BURMA JUDICIAL COMMISSIONER'S COURT, held in *Nga Chit Wet* v. *Kwanan*,[10] that the plaint in a suit to set aside a sale, which was not meant to be executed as a party, must be stamped *ad valorem*

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(3) 45 I.C. 238=3 Pat. L.J. 194; folld. *Parvati Bai* v. *Vishwanath*, 29 Bom. 207=6 Bom. L.R. 1125; but see and cf. *Khari Chand* v. *Meghni*, 98 I.C. 432=5 Pat. 493=1926 Pat. 453.

(4) 84 I.C. 624=1924 All. 612=47 All. 78.

(5) 2 P.R. 1886.

(6) 13 I.C. 865=7 N.L R. 190.

(7) 78 I.C. 782=1925 Lah. 90.

(8) 35 P.R. 1914=25 I.C. 435=237 P.L.R. 1914.

(9) 6 I.C. 891.

(10) 33 I.C. 624=1915 U.B.R. 102; followed 2 L.B.R. 266.

according to the value of the subject-matter. The RANGOON HIGH COURT, also, applied S. 7 (iv) (*c*) in a suit to declare a sale-deed invalid, and held that in cases falling under S. 7 (iv) (*c*), the plaint must be stamped according to plaintiff's valuation of the relief.[11] The Oudh Judicial Commissioner has explained in *Kuber Saran* v. *Raghubar*,[12] that certain cases falling under S. 39, Specific Relief Act, are simple declaratory suits in which consequential relief is desired. It was stated that where a person asks for a declaration that certain deeds are voidable against him because his consent to their execution has been caused by fraud, misrepresentation and not only asks for a declaration that those deeds are voidable, but also asks that the deeds should be cancelled and delivered up, the suit is distinctly a suit for declaration with a prayer for consequential relief. In *Raunag Ali* v. *Inam-un-nissa*, where the suit was solely to declare that a sale-deed executed by the plaintiff, is void, and inoperative as against him, on the ground that he was made to execute it because of coercion, undue influence, and fraud exercised upon him, it was held that that no *ad valorem* fee was required and a Court-fee stamp of Rs. 10 only was sufficient.[13] Similarly, it has been held in a NAGPUR case that a prayer to set aside or cancel a document implies a prayer for a consequential relief.[14]

210. (e) SEPARATE AND NECESSARY RELIEFS.— In *Rafiq-ud-din* v. *Asgar Ali*,[15] the PATNA HIGH COURT held that two declarations sought by a plaintiff, do not necessarily make a suit for a declaration, and a consequential relief; that the two reliefs asked for may, as a matter of fact, constitute one relief, and the declaration of the first relief may render unnecessary the declaration with respect to the second relief. Again, in *Mahabir Prasad* v. *Sham Behari*,[16] the same Court held that relief which is unnecessary, and follows as a matter of course from the decision in favour of the plaintiff on the other reliefs, is not a consequential relief. Following the principles of these decisions, the Patna High Court has held in *Kheri Chand* v. *Meghni*,[17] that where two reliefs are claimed in a suit, but a decision with regard to one of them would render a decision with regard to the other unnecessary, or where one of them would be obtained merely upon the strength of a decision with regard to the other, Court-fee is payable only in respect of the principal relief. Where, however, the reliefs claimed are separate, and necessary, Court-fee must be paid in respect of both of them. Accordingly, where the plaintiff prayed for a declaration to a joint-title to all properties inherited by her from her husband, as she was apprehensive of a claim to a moiety of such properties by defendant

(11) *Sit Soe* v. *Ma Thin*, 84 I.C. 201=1924 Rang. 378 (2).
(12) 1929 Oudh 491=121 I.C. 281=6 O.W.N. 885.
(13) 138 I.C. 147=9 O.W.N. 440.
(14) *Baburao* v. *Balajirai*, 118 I.C. 465=1929 Nag. 71.
(15) 63 I.C. 38=1922 Pat. 392=1 Pat. 1=3 P.L.T. 793.
(16) 80 I.C. 655=3 Pat. 795=1925 Pat. 44=6 P.L.T. 82.
(17) 98 I.C. 432=5 Pat. 493=1926 Pat. 453.

No. 1, and she also prayed for relief in connection with a particular deed of transfer executed by defendant No. 1, in favour of defendant No. 2, with respect to a particular property forming part of the estate inherited by the plaintiff from her husband, it was held that the two reliefs claimed by the plaintiff were separate and necessary reliefs, and that the suit fell within the purview of S. 7 (iv) (c) of the Court-Fees Act, and that the plaint must bear an *ad valorem* Court-fee.[18]

211. (f) LEASES.—A suit for the setting aside of a lease and to have buildings erected on the land by the lessee demolished, is one for declaratory decree with a consequential relief, and falls under this clause.[19]

212. (g) WILLS.—In *Hukam Singh* v. *Gyandevi*,[20] the PUNJAB CHIEF COURT, held that if the testator is alive in plaintiffs, reversioners could only ask for a declaratory relief, but after his death, they must go further and get the Will cancelled before they can avoid it. But, the MADRAS HIGH COURT, has held in *Kattiya Pillai* v. *Ramaswamia Pillai*,[21] that in a suit properly framed under S. 39 for declaring a Will to be a forgery, the cancellation of the Will and the cancellation of the order of the Sub-Registrar registering it is the function of the Court, and not part of the prayer in the plaint. Regard must be had to the substance of the thing and not to the mere form in which the relief is prayed for.[22] A suit for a declaration that the Will set up by the defendant is a forged deed, and that plaintiff is the legal heir of the deceased, also claiming an injunction against the defendant restraining him from interference with the property of the deceased, is a suit for declaration with consequential relief.[23]

213. (13) CONFIRMATION OF POSSESSION.—A prayer for confirmation of possession, is a technical form of suit, which has been held to be maintainable as a consequential relief, to the prayer for declaration of title,[24] for example, in suit to set aside a

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(18) 98 I.C. 432=5 Pat. 493=1926 Pat. 453.

(19) *Jogal Kishore* v. *Bindeshri*, 4 All. 320 (F.B.); also see *Sardar Singhji* v. *Ganpat Singji*, 17 Bom. 56; (Declaration of right and for injunction to prevent defendant receiving annual allowance); *Hari Sunker* v. *Kali Kumar*, 32 Cal. 734; and (Declaration and injunction restraining interference with possession).

(20) 36 I.C. 95=87 P.R. 1916=127 P.W.R. 1916; also see *Hakim* v. *Mt. Mahdab Kour*, 109 P.R. 1893; (Suit for a declaration during their life-time against a Will made by widows); also see *Charudas* v. *Jamna Devi*, 1929 Lah. 811=10 Lah. 403=112 I.C. 48.

(21) 1929 Mad. 396=56 M.L.J. 394=119 I.C. 35=1929 M.W.N. 286=29 L.W. 584.

(22) *C. V. Sunkaran Nair* v. *Gopal Menon*, 30 Mad. 18; and *Venkataramani* v. *Narayanaswami*, 1925 Mad. 713.

(23) 107 I.C. 609=9 Lah. 366=1927 Lah. 890, (*Bura Mal* v. *Tulsi Ram*).

(24) *Dinabandhu* v. *Rajmohini*, 16 W.R. 213; (Suit to confirm possession by enforcing the will by setting aside the summary order refusing a certificate under Act XXVII of 1860).

summary order, to declare title and confirm possession,[25] or in a suit for a declaration of title that an entry in the records of rights is wrong, and for confirmation of possession.[26] Where plaintiff brought a suit alleging that she is the real owner, in possession of certain properties, which stand in the name of the defendant, and that a decree obtained against the plaintiff by the defendant was fraudulent, and she claimed a declaration to that effect, coupled with a prayer for an injunction restraining the defendant from interfering with plaintiff's possession of the property in suit, and for confirming plaintiff's possession, held by the CALCUTTA HIGH COURT, that the plaintiff was entitled to put her own value on the relief sought, and Court-fee was payable accordingly, as a consequential relief falling under S. 7, para. (iv) (*c*), of the Court-Fees Act.[27] The words "confirmation of possession" have been held to mean and include a prayer for recovery of possession if the Court thinks that the plaintiff is out of possession, and, this prayer, is therefore, a consequential relief within the meaning of S. 7 (iv) (*c*) of the Court-Fees Act.[28]

214. (14) DECLARATION AND INJUNCTION—Preliminary observations.—An injunction is a consequential relief when it is coupled with a prayer for a declaration of title: but if the prayer is separately for injunction, clause (iv) (*d*) is applicable. A person out of possession of property cannot sue for mere declaration of title, and injunction, as this cannot give him full relief. But, where property is in possession of the Collector, or is in *custodia legis*, even the prayer for injunction may be redundant, and a surplusage. S. 7, Cl. (iv) (*c*) implies that the plaintiff is at liberty to assign his own value to the relief he claims as regards the consequential relief of injunction. Cases illustrative of the above principles may be cited from different High Courts.

215. Allahabad.—In *Jogeshra* v. *Durga Prasad*, it was held that in a suit for a declaration as well as for an injunction, the plaintiff must pay an *ad valorem* Court-fee according to the amount at which the relief sought is valued in the plaint, or memorandum of appeal.[29]

In *Manni Lal* v. *Radhey Gopalji*,[30] where the suit was brought by the plaintiff No. 3, with, and on behalf of plaintiffs Nos. 1 and 2, who were idols, for a declaration that plaintiff No. 3 is the lawful manager of plaintiffs Nos. 1 and 2, and for

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(25) 16 W.R. 213; and 19 W.R. 17; *also see* 51 Cal. 216 (to cancel partition sale); and 3 P.L.J. 448 (to cancel revenue sale and for confirmation of possession).

(26) *See* 22 C.L.J. 415.

(27) *Rajabala Dasi* v. *Radhika Charn Roy*, 1924 Cal. 969=79 O.C. 982 =40 C.L.J. 150.

(28) *Ram Sekhar Prasad Singh* v. *Sheonandan*, 68 I.C. 316=2 Pat. 193=4 P.L.T. 71=1 Pat. L.R. 25=73 I.C. 43.

(29) 24 I.C. 679=36 All. 500=12 A.L.J. 844.

(30) 47 All. 501=1925 All. 602=87 I.C. 190=23 A.L.J. 344.

an injunction restraining the defendant from supervising and managing the properties of the idols, and from entering thereupon, it was held that the possession of the property not being in dispute, the relief claimed by way of injunction was consequential, and not a separate relief to be valued separately under Cl. (4) (*d*), from the declaratory relief; that under S. 7, Cl. (4) (*c*), the Court-fee had to be paid on the aggregate value of the relief by way of declaration of right *plus* that of consequential relief. In *Kandhaiya Ojha* v. *Jograni Kuer*, the suit was by the reversioners of a Hindu widow for a declaration of the plaintiff's right and for an injunction restraining the defendant from wasting the property, and the Court-fee was held payable under S. 7 (iv) (*c*) on the value of the reliefs stated by the plaintiffs, but they could not be allowed to put a high valuation on the plaint for purposes of jurisdiction and a much lower valuation for purposes of Court-fees.[31]

216. Bombay.—Similarly, in *Raghunath Ganesh* v. *Gangadhar Bhikaji*,[32] where the plaintiff sued to obtain a declaration that he was entitled to the exclusive management of certain *devasthanam*, immoveable, and moveable property, containing a prayer for an injunction, the Bombay High Court, held that the injunction prayed for would be consequential relief, and Cl. (iv) (*c*) of S. 7, of the Court-Fees Act was, therefore, applicable, and the fee to be computed was on the plaintiff's valuation of the relief sought. Again, in *Sardarsingji* v. *Ganpatsingji*,[33] where *A* sued *B* and *C*, for a declaration of his title to certain property, and for an injunction restraining *C* from paying, and *B* from receiving a yearly allowance out of the income of the property in dispute, valuing each of the reliefs separately at Rs. 130, for purposes of Court-fees, and affixing a Court-fee stamp of Rs. 20 to the plaint, the High Court held that the two reliefs taken together, were for declaration with consequential relief, falling under S. 7 (iv) (*c*) and (*d*) of the Court-Fees Act, and the plaintiff had a right to put his own valuation on the relief sought. In 1894 B.P.J. 145, a suit for possession of money bond, and for an injunction restraining the withdrawal of money from the Bank, was taken to fall under S. 7 (iv) (*c*), of the Court-Fees Act.[34] In *Gulabsingji* v. *Lakshmansingji*,[35] where plaintiffs sued for a declaration that they were entitled to share in certain taluqdari estates, and for an injunction to restrain defendant from cutting and removing timber from certain forests, the suit was held to be one for a declaration with consequential relief under S. 7 (iv) (*c*) of the Court-Fees Act, an injunction being in the nature of consequential relief. In *Kunj Bihari*

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(31) 79 I.C. 358=46 All. 419=22 A.L.J. 349.

(32) 10 Bom. 60.

(33) 17 Bom. 56.

(34) 1894 B.P.J. 145.

(35) 18 Bom. 100.

Prasad v. *Keshavlal Hiralal*,[36] the claim was for a declaration of right to be the owner of the *gadi*, with an injunction restraining the defendant from obstructing the plaintiff in occupying the *gadi*, and from placing any other person on the *gadi*. The suit concerned property of a very large value, but on the pleadings, it was not found necessary for the plaintiff to sue for possession of the endowed property, and the High Court held that the suit was one for a declaration of right falling under S. 42, of the Specific Relief Act, with a consequential relief by way of injunction which secured to the plaintiff, in the most complete manner, the rights he claimed to the *gadi* for administering the affairs of the endowment: and the case fell within S. 7 (iv) (*c*) of the Court-Fees Act. In *Vachani Keshabai* v. *Nanbha Bavaji*,[37] the Bombay High Court, followed the Calcutta view in *Hari Sanker* v. *Kali Kumar*,[38] and held that in a suit for declaration and consequential relief (injunction) with respect to land, the Court must accept the value of the relief stated in the plaint for the purpose both of the Court-fees, and jurisdiction. And, in *Rhimbai Jamalbhai* v. *Mariam*,[39] the plaintiff, in a suit for declaration of heirship, and injunction with reference to certain property of the value of upwards Rs. 50,000 had only valued the relief at Rs. 130 and paid the prescribed Court-fee Rs. 10 only. In *Rachappa Subrao* v. *Shidappa Venkatrao*,[40] their Lordships of the Privy Council, in dealing with a suit where the prayers of the plaint were (1) for a declaration of ownership of property of deceased, as his adopted son,—Rs. 130; and (2) for a permanent injunction prohibiting the defendant from obstructing plaintiff's possession of property moveable and immoveable, relief valued at Rs. 5; and (3) for a general prayer for a suitable relief, held that there was "no warrant in law" for the practice of valuation of the prayer for declaration of title *only* at Rs. 130. It is contrary to the scheme of the Act that there should be any valuation for such a suit. In this case the prayer for injunction was found to be futile, and demurrable in the sense that no cause of action was disclosed which could have supported this relief:

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(36) 28 Bom. 567; (Cf. *Rathnasabapathi* v. *Ramasami*, 5 I.C. 630= 33 Mad. 452; —Suit by dismissed trustee of a temple, for declaration and injunction, held not maintainable without a prayer for possession); also cf. *Manik Chandra* v. *Dambharudhar*, 1930 Cal. 41=126 I.C. 267; (*Held*, that in a suit for declaration of right to office of the *shebait* of a temple and also for permanent injunction restraining interference with that right, the value of the relief is so much of the *debutter* property from which the plaintiff is dispossessed).

(37) 33 Bom. 307=11 Bom. L.R. 30=1 I.C. 108.

(38) 32 Cal. 734.

(39) 34 Bom. 267=12 Bom. L.R. 149=5 I.C. 867.

(40) 43 Bom. 507=1918 P.C. 188=46 I.A. 24=17 A.L.J. 418= 21 Bom. L.R. 489=29 C.L.J. 452=24 C.W.N. 33=36 M.L.J. 437= 25 M.L.T. 298=10 M.L.W. 274=50 I.C. 280 (P.C.).

(40*a*) Also see and cf. *Sunderbhai* v. *The Collector of Belgaum*, 43 Bom. 376=46 I.A. 15=52 I.C. 897=21 Bom. L.R. 1148 (P.C.); (Declaratory suit, with a prayer for injunction, valued at plaintiff's option under S. 7 (iv) (*c*) of the Court-Fees Act).

(40*b*) *Balkrishna Narayan* v. *Jankibai Sitaram*, 44 Bom. 331.

and the technical objection as to jurisdictional value was not allowed to prevail, as it was brought up too late, merely to obstruct the plaintiff, and not to secure benefit of the State. Their Lordships seem to have approved of the Bombay decisions, as regards declaratory suits with consequential relief falling under S. 7 (iv) (*c*) of the Court-Fees Act, being valued for purposes of Court-fees and jurisdiction, at the value of the relief fixed by the plaintiff at his option. See *Sunderbhai* v. *Collector of Belgaum*,[41] and also see *Balkrishna Narayan* v. *Jankibai Sitaram*,[42] in which the rulings of their Lordships of the Privy Council are noticed.

217. Calcutta.—In *Hari Sanker Dutt* v. *Kali Kumar Patra*,[43] where a suit was brought by the plaintiff alleging that he was in possession of certain jungle and that the defendants had interfered with his possession by cutting certain trees from it and sought in the suit, a declaration of his title to the whole jungle, and damages for the trees which the defendants had cut from it, and an injunction restraining the defendants from cutting any more trees, the High Court held that the case clearly fell within the provisions of para. (iv) (*c*) and (*d*) and of S. 7 of the Court-Fees Act: and that in such cases the Court had to accept the value of the relief sought by the plaintiff both for the purposes of the Court-fees as well as for the purpose of determining the jurisdiction of the Court to try the suit. In *Deokali Koer* v. *Kedar Nath*,[44] the High Court observed that "it is a common fashion to attempt an evasion of Court-fees by casting the prayers of the plaint into a declaratory shape. Where the evasion is successful, it cannot be touched, but the device does not merit encouragement or favour". Accordingly, where the plaintiff was not seeking a declaration "of any right as to any property" which could fall within S. 42, of the Specific Relief Act, but the suit was in form of a mere declaration, practically asking for an injunction, the High Court observed that an injunction is consequential relief, and "the language of the Specific Relief Act favours that view, and it is one that has the sanction of Indian decisions and also of the Court of Chancery". In *Dinanath Das* v. *Ramnath Das*,[45] Mookerjee, J., stated "that a prayer for injunction is a prayer for consequential relief quite as much as a prayer for confirmation of possession", and he cited the authority of *Umatul Batul* v. *Nauji Kuar*,[46] and *Jhuman Karti* v. *Debu Lal Singh*,[47] in support of his proposition,

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(41) 43 Bom. 376=52 I.C. 897=46 I.A. 15=21 Bom. L.R. 1148 (P.C.).

(42) 44 Bom. 331=56 I.C. 340=22 Bom. L.R. 289.

(43) 32 Cal. 734=9 C.W.N. 690; followed in *Jogendra Nath Sen* v. *Toriandnessa*, 62 I.C. 685; (Suit for declaration and injunction, without a prayer for recovery of possession not maintainable).

(44) 39 Cal. 704=15 I.C. 427=16 C.W.N. 838.

(45) 34 I.C. 702=23 C.L.J. 561.

(46) 6 C.L.J. 427=11 C.W.N. 705; see f.-n. (49), below.

(47) 22 C.L.J. 415=16 I.C. 898.

where plaintiff sued for a permanent injunction restraining the defendants from cutting timber and undergrowth from a jungle belonging to the plaintiff, the case was treated as one falling under S. 7 (iv) (*d*) of the Court-Fees Act.[48] But, where, as in the case of *Umatul Batul* v. *Nauji Kuar*,[49] or in the case of *Rajbala Dasi* v. *Radhaka Chan Roy*,[50] the suit is for declaration that a certain decree obtained by the defendant is fraudulent, and the plaint includes a prayer for an injunction restraining the defendant from executing the decree, or restraining him from interfering with plaintiff's rights, the prayer for injunction would be a prayer for consequential relief within S. 7, sub-section (4) and clause (*c*) of the Court-Fees Act. It has been held, in *Saidunnessa* v. *Tejendra Chander*,[1] that the plaint in a case in which the plaintiff not only asks for a declaration of rights but also prays for perpetual injunction restraining the defendant from putting in execution, a particular decree is chargeable with *ad valorem* Court-fee under S. 7 (iv) (*c*) of the Court-Fees Act. In *Girish Chander* v. *The Secretary of State*,[2] the plaintiff challenged the validity of the imposition which purported to have been made under Ss. 15 and 15-A of the General Police Act (V of 1867), and the mode in which the amounts were to be realized, namely, in accordance with Ss. 386 and 387 of the Code of Criminal Procedure, which is one of the modes provided for in S. 16 of the said Act. The prayers were for certain declaration and a permanent injunction restraining the realization of the amounts by the said method. It was held that the reliefs sought for in the plaint came within the terms of S. 7, Cl. (iv) (*c*) and (*d*) of the Act, and the value of the relief was its value to the plaintiff, which was not necessarily the value of the property involved; though the Court was of opinion that "any device to evade the payment of proper Court-fees by casting the prayers in a way so as to admit of lesser Court-fee being paid should be guarded against, and for that purpose it is necessary to look to the substance of the allegations made and of the reliefs sought for". Recently, in *Manik Chandra* v. *Dambharudhar*,[3] Mitter, J., has held, distinguishing, *Kunj Behari* v. *Purshottam Prasadji*,[4] that in a suit for declaration of right to office of a shebait of a temple, and also for permanent injunction restraining defendant from interfering with that right, the plaint is to be valued for purposes of jurisdiction and Court-fee at the value of the *debutter* property, or such portion of it from which the plaintiff is dispossessed.

218. Lahore.—The Punjab Chief Court, has followed the Bombay decision, in *Sardar Sangji* v. *Ganpat Singhji*, in holding

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(48) *Raicharan Panda* v. *Kunj Behari Das*, 46 I.C. 884.
(49) 6 C.L.J. 427=11 C.W.N. 705.
(50) 79 I.C. 982=40 C.L.J. 150=1924 Cal. 969.
(1) 44 I.C. 398.
(2) 105 I.C. 80=1928 Cal. 55.
(3) 1930 Cal. 41=126 I.C. 267.
(4) 28 Bom. 567; *see* f.-n. (36), *ante*.

that a suit for a declaration and also for an injunction, falls under S. 7, Cl. (4), (*c*), (*d*), of the Court-Fees Act, and the fee payable is according to the amount at which plaintiff values the relief sought.[5-7] This view has been again taken in the Full Bench ruling, *Barru* v. *Lachhman*,[8] where it was held, that a suit by plaintiffs (occupancy tenants) against defendants (proprietors) claiming a decree against the latter declaratory of certain rights in respects of a *shamilat* land, and also an injunction restraining defendants from interfering with the plaintiff's user of certain places, and their right to cut grass, etc., from the said land, was one falling under S. 7 (iv) (*c*) of the Court-Fees Act, and the valuation of the relief sought rested with the plaintiff, and the Court must accept such valuation for the purposes of Court-fees. In this case the suit was valued in the plaint for purposes of Court-fee at Rs. 130, and for purposes of jurisdiction at 1,100, but the value of the land was found to be Rs. 73,192. As the value for Court-fees and jurisdiction is to be the same, under S. 8, Suits Valuation Act, the value for both Court-fees and jurisdiction was taken at Rs. 130, inasmuch as Rs. 130 did not exceed the value of the land or interest in land in dispute, as determined by the rules made under S. 3 of the Suits Valuation Act. This Full Bench ruling was followed in *Bura Mal* v. *Tulsi Ram*,[9] and S. 7 (iv) (*c*) was applied to a suit, where plaintiff alleged that a certain will had been set up by the opposite party and asked for a declaratory decree to the effect that it had not been executed by the deceased, and that the document produced was a forgery, and plaintiff as legal heir of the deceased, also claimed injunction directing the opposite party to refrain from interfering with the property. The plaintiff was, accordingly, held entitled to fix whatever value he chose for the relief sought, and the jurisdictional value had to *follow* the valuation fixed for Court-fee purposes. Where a suit was brought by the reversioners for possession of certain land bequeathed to certain Gurdwara, against its members, and a decree based on compromise was passed in favour of the plaintiffs, and subsequently, one of the members brought a suit for declaration that the compromise decree was not binding on him, and alternatively for a declaration that the land bequeathed was waqf property, and for an injunction against the defendants not to interfere with it, S. 7, Cl. (iv) (*c*) was applied; and jurisdictional value was to be the same as the value for Court-fees.[10]

(5-7) *Khair Ahmad* v. *Mir Ahmad Ullah*, 13 I.C. 408=52 P.W.R. 1912.

(8) 111 P.R. 1913=228 P.W.R. 1913=23 P.L.R. 1914=22 I.C. 503 (F.B.); (folld. in *Bura Mal* v. *Tulsi Ram*, 107 I.C. 609=9 Lah. 366=9 L.L.J. 579=29 P.L.R. 27=1927 Lah. 890. (*Held*, that a prayer for an injunction amounts to consequential relief; *vide* 24 I.C. 679=36 All. 500; 17 I.C. 162=40 Cal. 245; and 33 Bom. 307=1 I.C. 108.)

(9) 1927 Lah. 890=9 Lah. 366. Compare *Gurdwara Mahant Jawala Singh* v. *Kala Singh*, 1931 Lah. 307=133 I.C. 120=32 P.L.R. 193.

(10) 1931 Lah. 307=133 I.C. 120=32 P.L.R. 193. (The amount at which plaintiff valued his relief was to be stated by him, but in view of his deliberate conduct in taking away the jurisdiction of a certain Court, he was not allowed to value the suit at less than the value for declaration and injunction combined—the ruling in 46 All. 419=79 I.C. 358=1924 All. 597 was followed.)

In *Gian Chand* v. *Bhagwan Singh*,[11] where plaintiff sued for a declaration that he (the plaintiff) is the owner of a shop, which was bequeathed to him under the Will of a deceased proprietor, and that the shop in question was in the actual physical possession of a tenant *A.S.* under the deceased, and that the defendant *B.S.* had refused to recognize the plaintiff's title to the said shop, and was raising obstacles in the way of the plaintiff's taking possession of the same, it was held by the Lahore High Court that *B.S.* was not in possession of the shop, and a relief by declaration of right with the consequential relief, by way of injunction, directed against the defendant prohibiting him from interfering with the plaintiff's attempts to get the tenants attorn to him, was sufficient, though if *A.S.*, the present tenant, then refused to give possession to the plaintiff, the plaintiff would be forced to bring a separate suit for ejectment. In *Ghulam Haider* v. *Kishambardas*, Tek Chand, J., has after a careful review of authorities, held that as a general rule the amount at which the plaintiff values the relief sought by him for purposes of Court-fee is to be taken despite anything to the contrary in the plaint as the value for purposes of jurisdiction, where the suit is for a declaration that the plaintiffs were lessees for a term of years of certain land, and for an injunction restraining defendants from interfering with plaintiff's possession as such lessees.[12]

219. Madras.—In *Abdul Kadar* v. *Mahomed*,[13] where the plaintiff prayed for a declaration that the defendant had no right either to the office of *Sheik* or to the properties in question, (some of which were found to be in possession of the defendant), and also prayed for an injunction restraining him from interfering with the properties or doing anything in any way inconsistent with the plaintiff's right to the office, and for further and other relief, the suit was held not maintainable, although an injunction was asked for as relief consequential on the declaration. The plaintiff was, however, permitted to pay additional stamp duty and amend the plaint by adding a prayer for possession. This was followed in *Rathna Sabapathi Pillai* v. *Ramasami Aiyar*,[14] where a suit by a dismissed trustee of a temple for a declaration of the invalidity of his dismissal and for an injunction restraining the other trustees from interfering with the management of his

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(11) 1932 Lah. 97=32 P.L.R. 745=135 I.C. 502. Compare *Rathna Sabapathi* v. *Ramaswami*, 5 I.C. 630=33 Mad. 452; where on the authority of *Abdul Kadar* v. *Mahomed*, 15 Mad. 15; *Narayana* v. *Shankumari*, 15 Mad. 255; and *Jagannatha* v. *Rama Rayer*, 28 Mad. 238; it was held that where the lands of a temple are in possession of tenants, the dismissed trustee should bring a suit against the rival claimants for possession by receipt of rent); also compare *Parumal Ailmal* v. *Motumal*, 17 I.C. 44=6 S.L.R. 144 (inclined to agree with 5 I.C. 630, *supra*).

(12) 140 I.C. 73=33 P.L.R. 458.

(13) 15 Mad. 15.

(14) 5 I.C. 630=33 Mad. 452; also see *Parumal Ailmal* v. *Motumal*, 17 I.C. 44=6 S.L.R. 144; and, *compare* 1932 Lah. 97=32 P.L.R. 745=135 I.C. 502.

office, was held not maintainable without a prayer for possession.[15] A suit for a mere declaration and injunction is barred, by S. 42 of the Specific Relief Act, where the plaintiff is out of possession at the date of the suit.[16] The Madras High Court, has held in a Full Bench ruling, in *Arunachalam* v. *Rangasamy*, that a suit for a declaration that an instrument of mortgage or sale executed by the plaintiff, or a mortgage decree passed against the plaintiff for a debt, is not binding on him, is not a mere declaratory suit, but is one with consequential relief falling under S. 7 (iv) (*c*) of the Court-Fees Act, when the prayer is for an injunction restraining the execution of the decree.[17] A suit for declaration of title to certain immoveable property and injunction restraining the defendant from putting up a fence on it, has been held to fall under S. 7 (iv) (*c*) of the Court-Fees Act; but under the proviso to Cl. (*c*), added by the Madras Amendment of 1922, the plaint in such a suit must bear a Court-fee stamp calculated on a valuation not less than the prescribed half value of the immoveable property computed in the manner laid down in S. 7, Cl. (5) of the Act.[18] The Madras proviso was applied as the question of title was held not incidental. But, in *Venkita Krishna Pather*,[19] the question of title was not raised at all, and the relief sought was the declaration of right of easement, a relief which may be said to be with reference to immoveable property, but which refers to no immoveable property that can be possessed as contemplated by Cl. (5). Accordingly, S. 7 (iv) (*c*) of the Act was applied to a suit for a declaration of plaintiff's right of way, and drainage over a piece of land, and for a mandatory injunction to remove the fences, and walls built in defiance of the said right. In *Bethasami Naicken* v. *Nagammal*,[20] where the plaintiffs, as members of a joint Hindu family, claimed a declaration of right in immoveable property, and for a permanent injunction, or alternatively, with a further prayer for a partition of a share in certain items of property in the event of the Court holding that plaintiffs were tenants in common with a co-tenant since deceased, it was held by Cornish, J., that the proviso to S. 7, Cl. (4) (*c*) applied, as the plaint undoubtedly contained a prayer for a declaratory decree and consequential relief in respect of a claim to immoveable property.

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(15) Compare *Kunj Behari* v. *Keshavlal*, 28 Bom. 567, which took a different view, and was not agreed to in 5 I.C. 630=33 Mad. 452 and also see *Strinivasa Ayyangar* v. *Strinivasa Swami*, 16 Mad. 31; (Suit against defendant in possession of mutt property, not competent in a form of mere declaration of title, without consequential relief).

(16) *Deivasikamani* v. *Subbiah*, 4 I.C. 1131=5 M.L.T. 224.

(17) 28 I.C. 79=38 Mad. 922 (F.B.).

(18) *Vaiyapuri* v. *Ramachandra*, 89 I.C. 930=1925 Mad. 1143=21 L. W. 679.

(19) 100 I.C. 263=1927 Mad. 348=52 M.L.J. 121=38 M.L.T. 18 =25 L.W. 158.

(20) 1931 Mad. 69=59 M.L.J. 899=1930 M.W.N. 656=33 M.L.W. 68=129 I.C. 625.

220. Nagpur.—The Nagpur Judicial Commissioner's Court has held in *Krishnarao* v. *Chandrabhaga*,[21] that there can be no doubt on the authorities that the claim for declaration and injunction is a claim for a declaration and consequential relief, and the plaintiff is entitled to put his own value on the relief claimed and the Court is bound to accept that value. Reliance was placed in this connection to the Calcutta decision in *Hari Sanker Dutt* v. *Kali Kumar Patre*,[22] followed in the Bombay case of *Keshabhai* v. *Nanbha*,[23] supported by the observations of their Lordships of the Privy Council in *Sunderbai* v. *The Collector of Belgaum*,[24] where it was held that "where a plaintiff sues for a declaratory decree and asks for consequential relief, and puts his own valuation upon that consequential relief, then for the purposes of Court-fee and also for the purposes of jurisdiction, it is the value that the plaintiff puts upon the plaint that determines both". The Calcutta decision in *Harihar Prasad* v. *Shyamlal*,[25] was not followed, as this was expressly dissented from by the Bombay High Court in *Govinda Krishna* v. *Hanmaya*.[26] To the same effect, is the ruling of Nagpur Judicial Commissioner's Court in *Andu* v. *Fazal*,[27] where the principle of the Bombay case has been noticed as affirmed by their Lordships of the Privy Council in *Sunderbai* v. *The Collector of Belgaum*.[28]

221. Patna.—The Patna High Court holds that an *ad interim* prayer for injunction is a substantial prayer which makes the relief a consequential one bringing the case for declaration, within S. 7 (iv) (*c*) of the Act.[29] In *Sitaram Singh* v. *Kesho Prasad*, where a zarpeshgidar sued for declaration of invalidity of a decree for arrears of rent obtained by the landlord and for setting aside the decree and sale in execution also for an injunction restraining the purchaser from taking possession of the property, it was held that S. 7 (iv) (*c*) applied, but the Court-fee was payable on the amount of zarpeshgi money,[30]

222. Sindh.—In *Parumal Ailmal* v. *Motumal*,[31] where the plaintiff sued to recover rents due to him by certain defendants, on a lease to these defendants by plaintiff's sister, claiming to be her heir, and injunction was claimed against certain other defen-

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(21) 1924 Nag. 316=79 I.C. 668.
(22) 32 Cal. 734=9 C.W.N. 690.
(23) 33 Bom. 307=11 Bom. L.R. 30=1 I.C. 108=5 M.L.T. 230.
(24) 43 Bom. 376=46 I.A. 15=1919 M.W.N. 254=52 I.C. 897 =23 C.W.N. 753=21 Bom. L.R. 1148 (P.C.).
(25) 17 I.C. 162=40 Cal. 245=16 C.L.J. 194=17 C.W.N. 591.
(26) 45 Bom. 567=59 I.C. 777=22 Bom. L.R. 145.
(27) 99 I.C. 868=1927 Nag. 375.
(28) *See* f.-n. (24), *supra*.
(29) *Gangadhar Misra* v. *Debendrabala*, 94 I.C. 22=5 Pat. 211=1926 Pat. 249.
(30) 1931 Pat. 195=131 I.C. 808=12 P.L.T. 550.
(31) 17 I.C. 44=6 S.L.R. 144.

dants who were alleged to be interfering with plaintiff's possession, the Sindh Judicial Commissioner's Court held that the plaintiff was claiming for two distinct reliefs, on the basis of two separate causes of action, against two different sets of defendants: and that the suit was one falling under clauses (1) and (4) (*d*) of S. 7 of the Court-Fees Act, and had to be stamped *ad valorem* on each claim. It was observed that the relief by way of injunction could not be decreed merely on a constructive possession through tenants.[32] The Sindh Judicial Commissioner's Court, agreeing with most of the other High Courts has held, in *Tyabally Abdul Hussain* v. *James, Finlay and Co.*,[33]that in a suit for a declaration and for an injunction by way of consequential relief, the plaintiff has the right to value his claim for the purposes of Court-fees, and the value for the purposes of jurisdiction is the same.[34] In *Hanifabai* v. *Tulsi Das*,[35] where the suit was for a declaration that the plaintiff has the right to recover and appropriate the rent of certain tenements, in lieu of her right to maintenance, and for a perpetual injunction restraining defendant No. 1 from causing the sale of certain plots of lands in execution of his decree against other defendants, so as to prejudice the plaintiff's right of maintenance, the Judicial Commissioner's Court held that the suit was not for maintenance, but for a declaration of a family arrangement providing for plaintiff's right of residence and maintenance from rent of certain properties, and she was also claiming an injunction against the principal defendant restraining him from proceeding in execution against those properties. Consequently, S. 7 (iv) (*c*) of the Court-Fees Act was applicable.

223. **VI. (15) DECLARATION AND POSSESSION—Preliminary observations.**—Suits for declaration of title, and recovery of possession of property as a consequential relief have to be distinguished from suits for possession merely, falling under S. 7 (v) of the Court-Fees Act. But a suit framed as one for consequential relief may be in substance one for possession, in which the prayer for declaration is superfluous. S. 7 (iv) (*c*) will apply where declaration is a necessary, if not the main relief. A plaint in such a suit would require an *ad valorem* Court-fee, or the value fixed by the plaintiff, and not the value determined under rules, for revenue paying estates. Typical examples of such suits, are suit for possession of property sold in execution of a decree which is not binding; or, a suit for possession of property of deceased proprietor, on a declaration of title as his adopted son; or, a suit by a Hindu son, to recover family properties wrong-

(32) *Ibid.*, citing *Rathnasabapathi* v. *Ramasami Iyer*, 33 Mad. 452=7 M.L.T. 311=20 M.L.J. 301=5 I.C. 630=1910 M.W.N. 112.

(33) 80 I.C. 969=1924 Sind 105 (2)=17 S.L.R. 15.

(34) See *Balkrishna Narayan Swami* v. *Jankibai Sitaram*, 56 I.C. 340 =44 Bom. 331=22 Bom. L.R. 289; also see *Arunachellam* v. *Rangaswami*, 28 I.C. 79=38 Mad. 922 (F.B.); *Shriram* v. *Dataram*, 70 I.C. 852=16 S.L.R. 109; *Deo Kali Koer* v. *Kedarnath*, 15 I.C. 427=39 Cal. 704=16 C.W.N. 838.

(35) 1930 Sind 198=123 I.C. 240.

fully alienated by the manager of family, or the father; or suits by reversioners, on the death of Hindu widows, or life-tenants with limited estates, or, suits by minors, to recover property after setting aside transactions by a guardian.

224. Allahabad.—Where an auction-purchaser of certain property was resisted in obtaining actual possession by a person, who claimed to be the owner in possession of the property, and his application under the Civil Procedure Code was rejected, whereupon he filed a suit against the person in possession claiming a declaration of his right to the property, and also to be put in actual possession thereof, it was held by the Allahabad High Court, that if the suit be treated as a suit for a declaration of the plaintiff's right to present possession of the property within the meaning of the Code of Civil Procedure, (old Act XIV of 1882, S. 335), it was properly stamped with a Court-fee of Rs. 10, but "as the claim sought not only a declaration of right, but possession also, there was a prayer for a declaratory decree and consequential relief, and therefore the Court-fee was payable under clause (iv) (*c*) of S. 7 of the Court-Fees Act."[36] In *Rup Narain* v. *Bishwa Nath Singh*,[37] where the suit was by a Hindu co-parcener for possession of family property on the ground of its transfer without legal necessity, and for the cancellation of the sale-deed, the Allahabad High Court held that the essential relief sought was recovery of possession, and if the plaint was so framed, the valuation of the property for purposes of Court-fee assessment should have been under S. 7 (v) (*a*) or (*b*) of the Court-Fees Act; but the plaint was so worded as to fall within the purview of S. 7 (iv) (*c*) of the Act, and the difficulty could be got over only if the plaintiff amended the plaint, or the valuation of the relief in the said plaint. Similarly, in *Ganga Dei* v. *Sukhdeo Prasad*,[38] where the suit as framed was clearly one for a declaration that the deed of gift was invalid against her with consequential relief of possession of the property conveyed by the deed, it was held that it was therefore "beside the mark to suggest that the suit might have been framed so as to ask for different reliefs, or in other words that it might have been framed purely as a suit for possession". Accordingly, the fee was made payable under S. 7 (v) (*c*) of the Act. In (*Bohra*) *Tula Ram* v. *Dwarka Das*,[39] where the plaintiff a co-parcener in respect of certain property, was contesting a mortgage of joint family property by another co-parcener, upon which the mortgagee had brought a suit for foreclosure and got a decree against his widow, and the plaintiff asked for a declaration that the mortgage-deed was void, and

(36) *Pirya Das* v. *Vilayat Kham*, 22 All. 384=20 A.W.N. (1900) 119.

(37) 68 I.C. 265=44 All. 629=1922 All. 358=20 A.L.J. 587.

(38) 1924 All. 612=47 All. 78=84 I.C. 624=22 A.L.J. 945; Cf. *Awadhraj Singh* v. *Dharamraj Kuar*, 1929 Oudh 419=120 I.C. 398.

(39) 1928 All. 248=50 All. 610=26 A.L.J. 316; Cf. *Awadhraj Singh* v. *Dharamraj Kuar*, 1929 Oudh 419=120 I.C. 398. (*Held* that a claim for possession of zamindari shares, by cancellation of a deed of mortgage in the alternative, was really a prayer for one relief by possession, and not for a declaration with consequential relief.)

ineffectual as the deceased co-parcener had no right to transfer the family property, and secondly, the plaintiff claimed possession of the property, it was observed by Ashworth, J., that "when the plaintiff asks for a declaration as his first relief, and possession as his second relief, it must be taken that in the opinion of the plaintiff, or at least of his legal adviser, the declaration is a necessary relief"; and, the suit could not be treated as an ordinary suit for possession of property, on the theory put forward by Tudball, J., in *Tika Ram* v. *Salig Ram*,[40] that it was unnecessary for the plaintiff to ask for a declaration. THE TEST laid down for such cases is whether the plaintiff includes amongst the reliefs claimed not only a request for possession, but also, as paving the way to such request, the relief of a declaration of title.[41] In *Radha Krishna* v. *Ram Narain*,[42] it was held "that for the purpose of determination of the Court-fee the actual relief asked for should be looked into, and it was entirely beside the consideration of the Court whether the suit was likely or not to fail, because the plaint did not ask for a consequential relief". Acting upon this principle, it was held in *Brij Gopal* v. *Suraj Karan*,[43] where the suit was instituted to obtain a declaration that the entire family property in the hands of the plaintiff, as the head of a joint family belonged equally to the plaintiff, and a defendant, and that certain documents executed by certain deceased members of the family did not affect the jointness of the family, that the plaint was sufficiently stamped with a Court-fee of Rs. 10 only, and the plaintiff could not be required to pay an additional Court-fee *ad valorem* on the value of the suit fixed for the purposes of jurisdiction, because no consequential relief had been asked, either openly or impliedly, and the view in Full Bench, Madras, (*Arunachellam* v. *Rangasamy*),[44] was not applicable.

225. Bombay.—In *Dhondo Sakharam* v. *Gobind Babaji*,[45] where a party failed to establish a claim preferred to the property attached in execution of a decree, brought a suit to establish his right to the property attached, under the provisions of Civil Procedure Code, (S. 283 of the Code of 1882), it was held by the Bombay High Court that the plaint was to be treated as falling under Art. 17, Cl. (1), of Sch. II of the Court-Fees Act, and was chargeable with only a ten rupee stamp, notwithstanding that the plaintiff prayed in such suit to be awarded possession. This ruling was referred to, but not discussed in *Pirya Das* v. *Vilayat Khan*.[46] In the Privy Council case of

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(40) (1920) 18 A.L.J. 903=57 I.C. 494.

(41) *Tula Ram* v. *Dwarka Das*—per Ashworth, J.—1928 All. 248=50 All. 610=26 A.L.J. 316. Cf. *Awadhraj Singh* v. *Dharmraji Kuar*, 1929 Oudh 419=6 O.W.N. 704=120 I.C. 398.

(42) 1931 All. 369=131 I.C. 604=53 All. 552.

(43) 1932 All. 560—141 I.C. 112=1932 A.L.J. 466.

(44) 28 I.C. 79=38 Mad. 922 (F.B.).

(45) 9 Bom. 20.

(46) 22 All. 384, f.-n. (36), *ante*.

Rachappa Desai v. *Shidappa*,[47] *ad valorem* Court-fee was paid on the property sought to be recovered but only rupees ten was paid in respect of properties in the custody of the Collector as in a suit for mere declaration because the property in the custody of the Collector should be deemed to be in possession of the successful party.

226. Calcutta.—A suit to set aside a revenue sale, and for possession of the property, has been held to fall under S. 7 (iv) (c) of the Court-Fees Act.[48] But, where the plaintiff sued for a declaration of title and for an injunction restraining the defendants from collecting rent from the cultivating *raiyats*, valuing the reliefs claimed at his option, and the defendant objected that the value of the property in dispute was much in excess of this valuation by plaintiff, it was held that, in substance the plaintiff will obtain possession of the property, as landlord of the cultivating raiyats, and that the value of the relief sought is the value of the property in dispute.[49] In *Radha Kaut Saha* v. *Debendra Narayan*,[50] the plaintiff had sued to recover possession of a permanently settled revenue paying estate, which had been sold in execution of a mortgage-decree, on the ground that although the decree was valid, the sale proceedings could not in law pass the title to the auction-purchaser. A declaration was sought that the personal decree could not have been made against them. It was held by the High Court that this declaration could only be consequential to the success of their substantial claim in the suit, and the plaint was substantially a suit for possession of land within the meaning of S. 7 (v) (*a*) of the Court-Fees Act. In *Basiram* v. *Ganesh*,[1] where the plaintiff sued for a declaration of his title and possession of the land, and for removing the licensee, and for a permanent injunction against the defendant restraining him from coming upon the land after removing him therefrom, it was held that the defendant being a mere licensee had no interest in the land and the plaintiff need not value the relief at the value of the land. In *Annandappa* v. *Totappa*,[2] Scott, C.J., stated the general principle that whether a plaintiff must sue for cancellation of a document under which the defendant in possession claims, depends upon "whether the onus of proving circumstances establishing its invalidity lies upon him or whether it lies upon the defendant to prove circumstances establishing its validity."

227. Madras.—In *Ganpati* v. *Chathu*,[3] it was decided that a suit brought to obtain a declaration of title to specific property

(47) 43 Bom. 507=24 C.W.N. 33=29 C.L.J. 452=1918 P.C. 188 =50 I.C. 280 (P.C.).

(48) 6 C.W.N. 157.

(49) 15 C.W.N. 823=10 I.C. 865=14 C.L.J. 47.

(50) 70 I.C. 101=49 Cal. 880=1922 Cal. 506=27 C.W.N. 566 =38 C.L.J. 74.

(1) 24 C.W.N. CLXVII (notes).

(2) 33 I.C. 441=17 Bom. L.R. 1137, note.

(3) 12 Mad. 223; (refd.) in *Keeramma* v. *Marupudi*, 1927 Mad. 563= 50 Mad. 646.

should be instituted in that Court in which a suit to recover its possession ought to be filed on the ground of title. This principle was applied in 15 Mad. 501, to the case of a suit by a member of the Malabar Tarwad, as karnavan, for a declaration that he was a member of it, adding no prayer for consequential relief, but which declaration it was held carried with it a recognition of his right to present possession of the tarwad property.[4] In *Rajgopala Naidu* v. *Vijayaraghavalu*,[5] where the suit was (1) for a declaration that a certain decree was of no legal effect against the plaintiffs, or the various properties in their hands, and (2) for possession of a portion of those properties which had been sold in execution of the decree, the High Court held that the suit was for a declaration with possession as a consequential relief, inasmuch as possession was not asked for in the plaint on any other ground than that the decree, in execution of which it was lost, should be declared invalid. Therefore, Court-fee was payable only for the relief regarding possession, but no separate *ad valorem* fee was held payable on the amount of the decree in respect of which the declaration was sought. In the Full Bench case of *Arunachellam* v. *Rangasami*,[6] the Court was of opinion that a suit in which the plaintiff in terms prays for a declaratory decree and consequential relief, *prima facie* comes within clause (4) (*c*) of S. 7 of the Act, but if at the same time it comes within any of the other classes of suits specified in the section, it must be treated as a suit of that description and dealt with accordingly''. In *Ramalinga Mudali* v. *Ramaswami*,[7] the suit was valued under clause (xi) (*cc*) as on a lease. But, the plaintiff having prayed *inter alia* for two distinct reliefs, (1) declaration that he is the absolute owner of the property, and (2) recovery of possession, Venkatasubba Rao, J., explained that a suit of this nature could not be said to be *merely* a suit by a landlord against a tenant, for recovery of immoveable property. A prayer for declaration of title would be clearly outside the scope of such a suit. Accordingly, it was stated that if a suit for possession is based on a specific tenancy pleaded in the plaint, the sole question would be whether there was a relationship of landlord and tenant between the parties; but, if the claim is not restricted to this ground, and the larger question of ownership is raised, the plaintiff may obtain a decree in ejectment on proving title. The result was that, where plaintiff sought a declaration of his title, and asked for possession, the suit had to be valued under S. 7 (iv) '(*c*) of the Court-Fees Act, as a suit for a declara-

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(4) 15 Mad. 501=2 M.L.J. 255.

(5) 25 I.C. 683=38 Mad. 1184; also see and cf. *Achattil Balakrishna* v. *Vishnu Nambudiri*, 1931 Mad. 375=132 I.C. 129=1930 N.W.N. 509; (Suit by minor members of a tarward for declaration that decree passed against *karnavan* is not binding on them, and for recovery of property sold in execution of that decree, is one for declaration and consequential relief).

(6) 28 I.C. 79=38 Mad. 922 (F.B.).

(7) 119 I.C. 577=1929 Mad. 529=29 L.W. 760; also see *Sobhandri Rao Pantulu*, In re 140 I.C. 462=1932 M.W.N. 1197=36 L.W. 701=63 M.L.J. 759.

tory decree along with consequential relief.[8] Thus, in *Venkata Lal* v. *Kasaldasu*,[9] where the suit was by plaintiffs as beneficiaries under a certain trust, to recover certain properties forming the subject-matter of the trust, which had been alienated by the trustees, it was held that the case was provided for by S. 7, Cl. (4) (*c*) of the Court-Fees Act, and did not fall under Art. 17-B of Sch. II of the Act. But according to the proviso applicable to Madras Presidency, the Court-fee should be assessed in the manner provided by S. 7 (v) of the Act. However, "as this would entail upon the plaintiffs a heavier Court-fee than that already imposed upon them, it was unnecessary to consider the alternative". Similarly, in *Koraga* v. *Sonappa*,[10] where the plaintiffs were suing for a share of family property after setting aside a previous partition, and some alienations made by the other members of the family on the ground that they were not binding on the plaintiffs, it was held that in a suit of this nature the declarations sought are only ancillary to the prayer for possession, and such a case is governed by S. 7 (iv) (*c*) of the Court-Fees Act, as to which the Madras amendment applies, *i.e.*, the valuation for purposes of Court-fees is one-half of the value of the immoveable property affected by the declaration, valued as provided by S. 7 (v), and not by S. 7 (iv-*A*) of the Court-Fees Act. The High Court followed the decision in *Venkata Narasimha* v. *Chandayya*,[11] where it was held that in such cases the valuation under S. 7 (v) must be adopted. The whole case-law has been reviewed in *Venkatasiva Rao* v. *Venkata Narasimha*,[12] where it is explained that before the amendment of the Court-Fees Act, so far as Madras Presidency is concerned by the introduction of the new sub-section 7 (iv-*A*) suits praying for a declaration that a decree obtained by the defendant against the plaintiff is void, for setting aside the decree, if necessary, and for recovery of the property covered by the decree, would have to be treated as suits for a declaratory decree, falling under Art. 17, Sch. II, if no consequential relief was prayed, or under S. 7 (iv) (*c*), if consequential relief was prayed for. But, now the Legislature has introduced a new sub-section 7 (iv-*A*) which specifically provides for such cases, and this provision must cover decrees, for money or other property having a money value, with the result, that in suits for cancellation of, or setting aside, decrees which have been made,

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(8) In *Sobhandari Rao* v. *Pantulu*, 140 I.C. 462=63 M.L.J. 759; where the plaintiff, an inamdar, claimed that he was entitled to both warams in the inam land, and he claimed to eject the defendants after due notice by virtue of his title to the kudivaram, although he had no proof of actually letting the defendants into possession; but the defendants asserted occupancy rights in the land, without disputing the plaintiff's right to *melavaram*, it was held that the Court-fee was payable on the plaint under S. 7 (iv) (*c*), and not under S. 7 (v), or (xi) (*cc*) of the Act.

(9) 1931 Mad. 24=33 L.W. 206=130 I.C. 449.

(10) (1932) 140 I.C. 585=36 L.W. 793=1933 Mad. 93=1932 M.W.N. 1322.

(11) 105 I.C. 171=53 M.L.J. 267=39 M.L.T. 193=1927 Mad. 825.

(12) 1932 Mad. 605=139 I.C. 317=63 M.L.J. 764=36 L.W. 225 =1932 M.W.N. 992.

for the recovery of property having a money-value, Court-fees has to be paid under the new sub-section. In *Veeraraghavalu* v. *Sreeramulu*,[13] where a minor sued to recover property, S. 7 (iv-*A*), was held not applicable. This was on the ground that it has been held in a long series of cases that a minor has not got to set aside the transaction by a guardian in suing to recover the property; and he can ignore the transaction, and merely pray for possession.[14] The decision in *Alagir Ayyangar* v. *Srinivasa Ayyangar*,[15] was dissented from in this case: and it was held that the unnecessary prayer for "setting aside", should be expunged from such plaints to avoid confusion. In *Alagir Ayyangar* v. *Srinivasa Ayyangar*, the prayer was to set aside alienations made by the father of the plaintiffs not only as manager of a joint Hindu family, but as their guardian, and the Court was of opinion that the alienations were *prima facie* binding on the minors appearing as parties to the alienations, and the suit had to be stamped *ad valorem* under sub-clause (v) (*c*), of the Act, on the authority of Full Bench ruling in *Arunachellam* v. *Rangasamy Pillai*,[16] S. 7 (iv-*A*), was also applied in *Doraiswami* v. *Thangavelu*,[17] taking the plaint to mean that alienation by guardian was to be set aside, as voidable, but not void.

228. Nagpur.—In *Pratab Singh* v. *Nanehal*,[18] where the plaintiff, a reversioner, alleged that the present holder of an inalienable estate was about to sell it, and he sought to prevent the sale of the property, it was held by the Judicial Commissioner's Court that the claim for declaration would be maintainable, if the plaintiff prayed merely that after the death of the present holder the sale will be ineffectual against the next heir, whoever he may be. But here he was suing for more, *viz.*, that the present holder shall be prevented from alienating, even for the term of his own life, and the Court-fee payable was the *ad valorem* fee on the sum of Rs. 40,000, the amount for which it was proposed to sell the property. It was held in *Baburao* v. *Balajirao*,[19] that

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(13) 112 I.C. 96=1928 Mad. 816.

(14) See *Unni* v. *Kunchi Amma*, 14 Mad. 26; see also *Kamaraju* v. *Gunnayya*, 1924 Mad. 322=45 M.L.J. 240=18 M.L.W. 233=1923 M.W.N. 756=74 I.C. 1003.

(15) 1925 Mad. 1248=22 M.L.W. 515=1925 M.W.N. 777=91 I.C. 709=50 M.L.J. 406; (folld. in *Vemnal Naidu* v. *The Official Receiver*, 117 I.C. 800=1929 Mad. 307; (Suit by minor son to recover share in family property, ignoring previous mortgage by father—Court-fee sufficient as for possession on the value of his share, without paying separate fee for the mortgage).

(16) 28 I.C. 79=38 Mad. 922=28 M.L.J. 118 (F.B.).

(17) 1929 Mad. 668; (where mother as guardian under Hindu law had executed a release deed, and minors sought for declaration that the document is invalid, and for injunction, the prayer in the plaint was taken in substance to be one for cancellation of the instrument. It was held that an alienation by a guardian must be regularly set aside; (30 Mad. 393=17 M.L.J. 220; 38 Mad. 867=24 I.C. 120=29 M.L.J. 617; 41 Mad. 102=40 I.C. 664; and 1924 Mad. 425, were relied on).

(18) 1928 Nag. 243 (1)=109 I.C. 576.

(19) 1929 Nag. 71—per MacNair, A.J.C.—118 I.C. 465=25 N.L.R. 52.

a suit for a declaration that a document does not affect a person's title, was not distinguishable from a suit for adjudgment that the document is void or voidable against that person, under the provisions of S. 39, Specific Relief Act, and although a suit of this nature merely asks for a declaration it is nonetheless a suit for a declaratory decree with consequential relief, as held in the Madras Full Bench case of *Arunachallam* v. *Rangaswamy*.[20] But, where the plaintiff does not claim a declaration in his plaint that a decree under which the defendant holds possession is not binding on him, but sues for possession *simpliciter*, he need pay Court-fee only on the actual relief claimed, under S. 7, Cl. (5).[21]

229. **Oudh**.—The Oudh Chief Court, held in *Sarju* v. *Sheoraj*,[22] that a suit for possession of land assessed to revenue by setting aside the sale in favour of the defendant, was really for possession, and the plaintiff cannot be considered to be asking two reliefs because the title of the defendant based on a certain transfer or auction-sale is questioned. Accordingly, Court-fee was only to be paid as on a relief for possession, under S. 7 (v) (*b*) of the Court-Fees Act, on five times the revenue. Reliance was placed on a judgment of the Allahabad High Court in *Haridari Begum* v. *Gulzar Bano*.[23]

Similarly, in *Awadhraj Singh* v. *Dharamraji Kuar*,[24] where the plaintiff claimed possession of the zamindari shares by setting aside the compromise and decree mentioned in the plaint, and if this relief was not granted, then alternatively for a decree for cancellation of a mortgage of that property, the Chief Court held that the case was not for a declaration with consequential relief. It was a suit for possession of the zamindari shares principally, and the prayer for cancellation of the mortgage-deed was only asked in the alternative. He could not be considered to be asking for two reliefs separately. The case in *Ganga Dei* v. *Sukhdeo Prasad*,[25] was explained and distinguished, on the ground that in that case the real relief prayed was the cancellation of the deed of gift executed by the lunatic husband of the plaintiff lady, who was claiming a declaration of invalidity of the conveyance, with a consequential relief in form of actual possession of the land conveyed by the deed, and Court-fee was, therefore, payable under S. 7 (iv) (*c*) of the Court-Fees Act. In *Deoraj* v. *Kunj Behari*,[26] the principles governing suits when possession as well as a declaration is asked for were clearly stated, by Stuart, C.J., and Srivastava, J. It was held, that "if the principal relief claimed is one

(20) 38 Mad. 922=28 I.C. 79=28 M.L.J. 118=1915 M.W.N. 118 (F.B.).

(21) *Babuappa* v. *Ramchandra*, 1929 Nag. 276; 50 All. 610 (relied on *Rajagopala* v. *Vijayaraghavalu*, 38 Mad. 1184=25 I.C. 683).

(22) 94 I.C. 179=13 O.L.J. 124=1926 Oudh 380.

(23) 25 I.C. 395=36 All. 322=12 A.L.J. 481.

(24) 1929 Oudh 419=6 O.W.N. 704=120 I.C. 398.

(25) 47 All. 78=1924 All. 612; folld. in *Tularam* v. *Dwarkadas*, 50 All. 610=1928 All. 248; cf. *Deoraj* v. *Kunj Behari*, 1930 Oudh 104=124 I.C. 420, f.-ns. (26) and (27).

(26) 1930 Oudh 104=5 Luck. 474=124 I.C. 420=6 O.W.N. 1105.

for possession and the relief for declaration is merely ancillary to it, in that case it is enough to pay the Court-fee on the relief for possession. On the other hand, if the principal relief is for declaration, and the plaintiff's right to possession depends upon his being entitled to the declaration, then the relief for possession must be regarded as a consequential relief, and the Court-fee would be payable according to the amount at which the relief sought is valued in the plaint or the memorandum of appeal''. Accordingly, where the plaintiff could not ignore the decree for foreclosure and sale which had been obtained against his father, and it was found necessary for him to get a declaration about the said decree not being binding on him before he could be entitled to a decree for possession, the relief for possession was, therefore, undoubtedly a consequential relief.[27] This was followed in *Afzal Husain* v. *Shafiqunnissa*,[28] and it was held that the question to be considered in such cases is the principal relief claimed, without regard to the order in which the plaintiff has stated the relief sought by him, but considering the substance of those reliefs. In that case, the plaintiff was alleging that the deed of gift was executed by him in his minority, and was therefore, *ab initio* void. The Chief Court, accordingly, was of opinion that the principal relief sought by the plaintiff was possession and the relief by way of cancellation of the deed of gift was in a sense ancillary to it, as in the case of *Awardhraj Singh* v. *Dharmraji Kuar*.[29]

230. Patna.—In *Dhakeswar Prasad* v. *Jioo Chowdhry*,[30] a suit for a declaration that a revenue sale is invalid and for confirmation or restoration of possession, was held to fall under S. 7 (iv) (*c*) of the Court-Fees Act, and Court-fee must be paid *ad valorem* in respect thereof. The view followed was that taken in the Calcutta case of *Mahomed Takibuddin*[31] supported by the principle of the decision in the Maras Full Bench case of *Arunachallam* v. *Rangasamy*.[32] Similarly, S. 7 (iv) (*c*) of the Court-Fees Act was applied where a challenge was directly thrown on the plaintiff's title as the adopted son of a certain deceased person, and unless the plaintiff could prove not only his adoption but the validity of his adoption, he could not have any claim to recover possession. The prayer for declaration of title as an adopted son was not a surplusage, but the very foundation of the plaintiff's case, and the suit to recover possession of his adoptive father's property was held to fall not within clause (5) of the section, but came within S. 7 (iv) (*c*) of the Court-Fees Act.[33] Likewise, in a parti-

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(27) 1930 Oudh 104=5 Luck. 474=124 I.C. 420=6 O.W.N. 1105.

(28) 1930 Oudh 368=7 O.W. N. 571=126 I.C. 688.

(29) 1929 Oudh 419=120 I.C. 398 f.-n. (24), *ante*.

(30) 46 I.C. 385.

(31) *Mahomed Takibuddin* v. *Collector*, 6 C.W.N. 157; (Suit to set aside a revenue sale and for possession as a consequential relief).

(32) 28 I.C. 79=38 Mad. 922=28 M.L.J. 118=17 M.L.T. 154 =1915 M.W.N. 118 (F.B).

(33) *Ugra Mohan* v. *Lachhmi Prasad*, 56 I.C. 422=5 P.L.J. 339.

tion case, where the defendants were in possession of a part of the property to be partitioned, and had denied plaintiff's title, the suit was treated as a suit to recover possession, and *ad valorem* Court-fee was payable on the value of that property.[34] In a suit for declaration of title, and recovery of possession, Court-fee *ad valorem* was held payable in *Rasik Behari* v. *Hridoy Narayan*,[35] and also in *Ram Sekhar* v. *Sheonandan Dubey*.[36] The principle laid down by the Special Bench, in *Ramsuran Prasad* v. *Gobind Das*,[37] in respect of suits for a declaratory decree, in which consequential relief is expressed or implied, is, that "where the plaintiff claims relief to which he is not entitled until some decree or alienation of property which stands in his way has been avoided, or until his legal character, or title, which has been called in question, has been declared by a decree of the Court, the suit comes under clause (iv) (*c*) of S. 7, even though the declaration which it is necessary for him to obtain before the further relief can be granted has not been in terms asked for in the plaint". On the other hand, where such a declaration is not necessary to enable the plaintiff to obtain possession of property or other relief for which the suit is really brought, the suit does not fall under clause (iv) (*c*) merely because a declaratory decree is sought, as a mere surplusage. The principle has again been explained in *Kheri Chand Mahton* v. *Mt. Meghur*,[38] with reference to previous cases in *Rafiquddin* v. *Asgarali*,[39] and *Mahabir Prasad* v. *Shyam Behari Singh*,[40] where two declarations are sought, they do not necessarily make a suit for a declaration and a consequential relief. It may be that the two reliefs asked for, as a matter of fact, constitute one relief, and the declaration of the first relief would render unnecessary the declaration with respect to the second relief. A relief which is unnecessary and follows as a matter of course from the decision in favour of the plaintiff on the other reliefs, is not a consequential relief. Accordingly, where plaintiff prayed for a declaration as to her joint title to all the properties inherited by her from her husband, with another separate and necessary relief, the suit fell within the purview of S. 7 (iv) (*c*) of the Court-Fees Act, and the plaint was to bear an *ad valorem* Court-fee.[41]

231. Rangoon.—The RANGOON HIGH COURT,[42] seems to be of the same view as the NAGPUR COURT.[43] It was held in *Maung Shein* v. *Ma Lon Ton*, that S. 7 (iv) (*c*) of the Court-Fees Act applies only to suits where plaintiff has to obtain a declaratory

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(34) *Harnarayan* v. *Suresh*, 63 I.C. 203; citing 39 I.C. 579; and 56 I.C. 570=1 P.L.T. 529.

(35) 66 I..C. 769=1 Pat. 471=1922 Pat. 284=3 P.L.T. 327.

(36) 68 I.C. 316=73 I.C. 43=2 Pat. 198=1923 Pat. 137.

(37) 68 I.C. 700=2 Pat. 125=1922 Pat. 615=3 P.L.T. 704 (S.B.).

(38) 98 I.C. 432=5 Pat. 496=1926 Pat. 453.

(39) 63 I.C. 38=1922 Pat. 392=1 Pat. 1=3 P.L.T. 793.

(40) 80 I.C. 655=3 Pat. 795=1925 Pat. 44=6 P.L.T. 82.

(41) 98 I.C. 432=5 Pat. 496=1926 Pat. 453.

(42) *Maung Shein* v. *Ma Lon Ton*, 1931 Rang. 319=9 Rang. 401.

(43) *Babuappa* v. *Ramchandra*, 1929 Nag. 276.

decree or order to perfect his right to consequential relief claimed by him, and not to other cases. For example, where a declaration that a valid adoption of the plaintiff had taken place is neither claimed in the plaint, nor necessary preliminary to his right to recover possession of the land in suit, S. 7 (iv) (*c*) was held not to apply.[44] But where the plaintiff claims relief by possession to which he is not entitled until some decree, or document, or alienation of property is avoided, a suit in which a declaration in that behalf is claimed is within S. 7 (iv) (*c*) of the Court-Fees Act.[45] Accordingly, where plaintiffs, alleged adopted sons of the owner of land, sued for possession, the Court-fee was not payable *ad valorem* under S. 7 (iv) (*c*), but the suit fell under S. 7 (v) of the Court-Fees Act.[46]

232. VI. (16) DECLARATION WITH POSSESSION OF WIFE.—Where the plaintiff instituted a suit against his alleged wife and her mother, for a declaration that defendant No. 1 was his lawfully married wife, and also prayed for restitution of conjugal rights, valuing the suit for purposes of jurisdiction at Rs. 1 lac, being the amount of dower fixed, and a Court-fee of Rs. 10 for declaration of validity of the *nikah*, another Rs. 10 for having an injunction issued directing defendant No. 1, to live with plaintiff, and Rs. 5, for recovery of possession of the wife, in all Rs. 25, it was held by the CALCUTTA HIGH COURT, "that Art. 15 of Sch. II of the Court-Fees Act, cannot apply to cases such as this, in which the parties are disputing as to whether the defendant No. 1 was ever married to the plaintiff or not, and in which the plaintiff seeks for a declaration that the defendant No. 1 is married to him, and only in the event of his obtaining this declaration prays for the consequential relief that the defendant No. 1 should be ordered to live with him, and that the other defendants should be directed to give her up to him". The mode of computation of valuation of suit by plaintiff was entirely wrong, utterly unknown under the Court-Fees Act, and totally against the practice of the Courts.[47] The suit fell under S. 7 (iv) (*c*) and *ad valorem* fee had to be paid on the valuation of the relief fixed by the plaintiff himself.[48] In the Punjab, it has been held that the claim for injunction in such

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(44) *Ganga Dei* v. *Sukhedo Prasad*, 84 I.C. 624=47 All. 78=1924 All. 612; *Tula Ram* v. *Dwarka Das*, 115 I.C. 655=50 All. 610=1928 All. 248; and *Ugra Mohan* v. *Lachmi Prasad*, 56 I.C. 422=5 P.L.J. 339.

(45) *Deokali Koer* v. *Kedarnath*, 39 Cal. 704=16 C.W.N. 838=15 I.C. 427; *Hakim Rai* v. *Phardas Gorkh Rai*, 102 I.C. 46=8 Lah. 531=1927 Lah. 499; *Arunachallam* v. *Rangasami*, 28 I.C. 79=38 Mad. 922=28 M.L.J. 118 (F.B.); and *Parvatibhai* v. *Vishwanath*, 29 Bom. 207.

(46) *See* f.-n. (42), *supra*.

(47) *Amirul Hossain* v. *Khairunnessa*, 28 Cal. 567 (569, 570).

(48) See *Jan Mahammad* v. *Masker*, 34 Cal. 352; and *Jair Hussain* v. *Khurshed*, 28 All. 545. It was held in 34 Cal. 352=11 C.W.N. 458=5 C.L.J. 400, that the plaintiff, in the absence of rules framed under S. 9 of the Suits Valuation Act, can put any valuation he likes, and stamp his plaint with *ad valorem* Court-fee calculated on that valuation. In the ALLAHABAD FULL BENCH CASE, where it was held that the value of such a suit is the value which the plaintiff chooses to put on it. But again it was held in the case of *Aisha* v. *Faiyaz*, 11 I.C. 186=8 A.L.J. 889, that a Court-fee of Rs. 10 is payable.

cases is merely an ancillary and incidental relief; (*Mt. Bhani* v. *Bansi*, 28 P.W.R. 1916); and under the rules such suits are to be valued at Rs. 200 for Court-fees and Rs. 1,000 for jurisdiction, (*Rahmat Beg* v. *Shah Begam*, 21 P.R. 1916).

233. VI. (17) EJECTMENT.—In *Parmeshwar Singh* v. *Sureba Kuar*, a suit for declaration of title as occupancy-tenant of a land, was so framed as to involve the prayer for a consequential relief, by claiming ejectment of the defendants as under-*raiyats* holding under the plaintiff, and also for arrears of rent. THE PATNA HIGH COURT held, that a suit as framed comes under S. 7 (iv) (*c*) of the Court-Fees Act.[49] It was held by the MADRAS HIGH COURT in *Ramalinga* v. *Ramasami*,[50] that where the plaintiff instead of merely claiming to be the landlord wanted a declaration of his title also, and this cannot be regarded as an unnecessary declaration, the suit is governed by S. 7 (iv) (*c*), and not by Court-Fees Act, S. 7 (xi) (*cc*). It has been explained in *Sobhanadri Rao Pantulu Garu*,[1] that clause (11) is applicable when the suit is based on a lease, but not when the plaintiff also wants a decree establishing his title; *Balasiddhantam* v. *Perumal Chetti*,[2] was relied upon. The appropriate section is S. 7 (iv) (*c*) where the suit is to obtain a declaratory decree of title to the *kudivaram*, and consequential relief of possession.[3]

234. VI. (18) ENTRY IN RECORD OF RIGHTS.—It has been noticed in comments under paragraph "VI" (9), Bengal Tenancy Act", *ante*, that a suit under S. 104-*H* of the Bengal Tenancy Act, for declaration that the plaintiff is an occupancy *raiyat*, and not a tenure-holder, as he has been entered in the record of rights, and for settling a fair and equitable rent, is for a consequential relief falling under S. 7 (iv) (*c*) of the Court-Fees Act.[4] A suit for mere declaration that the entry in record of rights is wrong, is not chargeable with an *ad valorem* Court-fee,[5] and the proviso to S. 111-*A* of the Bengal Tenancy Act provides for declaratory relief against an entry in record of rights, by persons in possession of occupancy rights, but a relief claimed in addition "that the entry in the record of rights as to plaintiff's status as a tenure-holder is a nullity", will bring the case under S. 7 (iv) (*c*) of the Act.[6] But, such a prayer has been held

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(49) 65 I.C. 240 (Pat.).

(50) 1929 Mad. 529=119 I.C. 577=29 M.L.W. 760=1929 M.W.N. 239.

(1) 1933 Mad. 42=1932 M.W.N. 1197=63 M.L.J. 759=36 M.L.W. 701=140 I.C. 462.

(2) 27 I.C. 162=1913 Mad. 654.

(3) 1933 Mad. 42=140 I.C. 462, *supra*.

(4) *Pajiruddin* v. *Secretary of State*, 17 I.C. 919=16 C.L.J. 383; followed in *Troylokanath Pal* v. *The Secretary of State*, 18 I.C. 188=17 C.L.J. 26; also see *Shrinath Chandra* v. *Secretary of State*, 5 I.C. 141.

(5) *Sailaja Nath* v. *Chandi Charan*, 48 I.C. 552.

(6) *Midnapore Zamindary Co.* v. *Secretary of State*, 44 Cal. 352=40 I.C. 96=21 C.W.N. 834; and *The Official Trustees* v. *Gobardhan Gnabait*, 118 I.C. 357=33 C.W.N. 231=1929 Notes 7 (*a*).

redundant, in the Patna case of *Tewary Kora* v. *Bhupat Mander*, on the ground that if the entry is *wrong*, it is superfluous to ask a consequential relief, that it is *not binding* upon the plaintiff.[7]

235. VI. (19) FRESH PARTITION.—A partition suit, pure and simple, falls within Sch. II, Art. 17 (iii) of the Court-Fees Act.[8] But, where the relief sought was to declare a previous *solehnama* and decree to be invalid, "and to bring into hatchpot for the purpose of making a partition, the properties which, since that arrangement had been in the exclusive possession of one or other of the defendants, and it was also sought to have certain additional properties brought into partition", this portion of the prayer in the suit was held to constitute consequential relief,[9] and *ad valorem* Court-fee was payable under S. 7 (iv) (*c*) of the Court-Fees Act. Where the plaint is in substance one for a declaration that the partition deed is not binding on the plaintiff, and for further reliefs following on such declaration, *viz.*, a fresh allotment of the properties, S. 7 (iv) (*c*), if not S. 7 (iv) (*b*) applies to the case.[10] A suit for partition, and possession of the plaintiff's share, in which the declaration, for setting aside previous alienations, is only ancillary to the prayer for possession, is governed by S. 7 (iv) (*c*), Court-Fees Act, as to which the Madras Amendment applies, *i.e.*, the valuation for purpose of Court-fees is one half of the value of the immovable property affected by the declaration, valued as provided by S. 7 (v) of the Act.[11]

236. VI. (20) LANDLORD AND TENANT—Suits between.—A suit for ASSESSMENT OF RENT and for recovery of a specific sum of money as damages for use and occupation is in the nature of a suit to obtain a declaratory decree where consequential relief is claimed, and the amount of Court-fees payable on such a suit should be computed according to clause (iv) (*c*) of S. 7 of the Act.[12] It has been held in *Dhanukhdari* v. *Mani Sonar*,[13] that a suit for recovery of possession with mesne profits, and in the alternative for assessment of fair and equitable rent, is a suit for a declaration of the plaintiff's title to the land, and for conse-

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(7) *Cf.* 50 I.C. 298=4 Pat. L.J. 302 (prayer held redundant, not consequential).

(8) *Zinnatunessa Khatur* v. *Girindra Nath*, 30 Cal. 788; also see *Bidhata Roy* v. *Ramcharitra*, 6 C.L.J. 651=12 C.W.N. 37; and *Suryanarayana* v. *Seshayya*, 1926 Mad. 122.

(9) *Hara Gowri Saha* v. *Dukhi Saha*, 5 I.C. 582.

(10) *Sundara Ganapathi* v. *Daivasikamani*, 1931 Mad. 94=1930 M.W.N. 358=129 I.C. 824.

(11) *Koraga Gowda* v. *Somappa Gowda*, 1933 Mad. 93=1932 M.W.N. 1323=36 M.L.W. 793=140 I.C. 585.

(12) *Kalicharan Roy* v. *Kesho Prasad*, 51 I.C. 15=4 P.L.J. 561.

(13) 100 I.C. 913 (915)=6 Pat. 17=1927 Pat. 123=8 P.L.T. 366; follows 51 I.C. 15, *supra*; also see *Pajruddin* v. *Secretary of State*, 17 I.C. 919; and *Trailokiya* v. *Secretary of State*, 18 I.C. 188; suits for a declaration that the plaintiff is an occupancy *raiyat*, and for settling a fair and equitable rent was held to be a suit for a declaratory decree with consequential relief.

quential relief. Art. 17 of Sch. II of the Court-Fees Act, which applies to purely declaratory suits, does not apply to such cases, and the case does not fall under S. 7 (iv) (*b*) also.

237. Where a suit is brought BY THE LANDLORD FOR KHAS POSSESSION against several persons between some of whom and the landlord there is no relationship of landlord and tenant, the suit does not fall under S. 7 (xi) of the Court-Fees Act, and it would fall under S. 7 (iv) (*c*) of the Act, as the suit cannot proceed against those persons, without a prayer for declaration of title.[14] The converse case of suits for recovery of possession by tenant, is also governed by S. 7 (iv) (*c*), as clauses (*a*) to (*d*) of S. 7 (v) of the Court-Fees Act, are confined in their effect to land in respect of which revenue might be paid.[15] The value of the suit being the subject-matter in controversy, that is, the value of the interest claimed by the plaintiff, a suit for declaration of right as an occupancy *raiyat* in a garden and to recover possession thereof, has to be valued not with reference to the entire interest in the land, that is, the interest claimed by the plaintiff as also the interest of the superior landlord.[16]

238. A suit for DECLARATION OF STATUS AS AN OCCUPANCY RAIYAT of the land, and for a declaration that the defendants are under-*raiyats* holding under the plaintiff, and ALSO CLAIMING TO EJECT THEM, and for some arrears of rent, is clearly a suit of the class which comes under S. 7 (iv) (*c*) of the Court-Fees Act.[17]

239. VI. (21) SUITS RELATING TO TRUSTS.—A suit in which the plaintiff seeks for DECLARATION that he is the SOLE SHEBAIT of an idol, AND also for an INJUNCTION to restrain the defendant from interfering with his possession of the endowed properties, falls within S. 7 (iv) (*c*) of the Court-Fees Act,[18] and the amount of Court-fee should be computed according to the amount at which the relief sought was valued by the plaintiff.[19] Where the plaintiff a dismissed trustee asked for a reinstatement in his office of *Dharmakarta* of the Temple, and also for an injunction restraining the defendants from interfering with him in that office, and the physical possession of temple properties was outstanding in the tenants, who were willing to pay the rents to whoever was found to be lawfully entitled to office, it was held by the Madras High Court that it was not necessary for the

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(14) *Promotha Nath* v. *Amiraddi*, 55 I.C. 178 (Cal.)=24 C.W.N. 151.

(15) *Ram Ekbal Singh* v. *Baldeo Singh*, 25 I.C. 507=19 C.L.J. 418; citing, *Furzund Ali* v. *Mohanth Lal Puri*, 32 Cal. 268 (Suit for recovery of possession of an occupancy holding, from which plaintiff was dispossessed by the landlord, brought against landlord and other persons inducted into the land).

(16) *Upendra Chandra* v. *Satcowri Dhar*, 23 I.C. 964 (Cal.).

(17) *Parmeshwar Singh* v. *Sureba Kuer*, 65 I.C. 240 (Pat.).

(18) *Rajkrishna* v. *Bepin Behary*, 17 I.C. 162=40 Cal. 245=17 C.W.N. 591=16 C.L.J. 194; also see *Mohendra* v. *Dinabandhu*, 21 I.C. 771=19 C.L.J. 15.

(19) 21 I.C. 771=19 C.L.J. 15, *supra*.

plaintiff in such a case to ask for possession of the properties.[20] The case would be different where the possession of property is with the defendant who is holding adversely to plaintiff, and the prayer for declaration and injunction even if granted cannot secure to the plaintiff all that he wants, being out of possession, actually or constructively.[21] In *Raghunath Ganesh* v. *Gangadhar*, a suit to obtain a declaration that the plaintiff was entitled to the exclusive management of certain *devasthan* immoveable and moveable property, and also injunction was held to fall under S. 7, sub-clause (iv) (*c*) of the Act, and the plaintiff-appellant was required to state in the memorandum of appeal at what amount he valued the relief sought, in order that the fee might be computed.[22] In a suit falling under S. 7 (iv) (*c*), the valuation for purposes of Court-fees is to be determined first, and that for the purposes of jurisdiction must follow on the same. but the plaintiff cannot be allowed to set a high value for the purposes of jurisdiction and a lower value for purposes of Court-fee by placing a mere nominal value on the relief by injunction.[23] For example, where plaintiff in a suit for declaration that the defendant had no power to supervise and manage the properties of the idols, and that the plaintiff was the lawful manager of the idols, valued this relief at Rs. 25,000 for jurisdictional purposes, and paid only Rs. 10 as Court-fee, and he valued the relief for injunction at Rs. 1,000 and the relief for recovery of movables at Rs. 500, and paid *ad valorem* Court-fee only on these two latter reliefs, it was held that the suit was one for a declaratory decree, with a consequential relief, and the Court-fee was payable on the plaintiff's total valuation of the three different reliefs, and the Court-fee payable on appeal was also determined on the same basis.[24]

240. A SUIT FOR REMOVING A TRUSTEE in possession of endowment property, and for appointing the plaintiff in his stead, and placing him in possession of the trust property must be treated as praying for some consequential relief, if not for possession.[25] In *Omrao Mirza* v. *Jones*, where in a suit for the removal of the defendant from the management of certain trust funds on the ground of misconduct, the plaintiff had valued his suit at Rs. 7,000 for purposes of jurisdiction paying only a fixed fee of Rs. 10, it was held that the Court-fee must be estimated upon the plaintiff's interest in the subject-matter in suit, *viz.*, Rs. 7,000.[26] In *Delrus*

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(20) *Ramdas* v. *Hanmantha*, 12 I.C. 449=21 M.L.J. 952=10 M.L.T. 356=(1911) 2 M.W.N. 387.

(21) *Rathnasabapathi* v. *Ramasami*, 33 Mad. 452=5 I.C. 630; also see *Abdul Kadir* v. *Mahomed*, 15 Mad. 15; *Narayana* v. *Shankuni*, 15 Mad. 255; and *Jagannadha* v. *Rama Rayar*, 28 Mad. 238.

(22) 10 Bom. 60.

(23) *Manni Lal* v. *Radhey Gopalji* 87 I.C. 190 (194)=23 A.L.J. 344=47 All. 501=1925 All. 602.

(24) *Ibid.*

(25) 8 Mad. 516 (519).

(26) 10 Cal. 599.

Banoo v. *Abdoor Rahman*,[27] the plaintiffs had asked for distinct and important consequential relief, in so far as they asked, not only that the defendant may be declared to have wasted the endowment, and thereby to have betrayed her trust, but also prayed that she may be turned out of her *mutwaleeship*, and, they, the plaintiffs be appointed in her room. The Privy Council observed, that "the plaintiffs say that what they claim does not admit of being properly estimated by a money-value; but this is not so. Under the *towleutnama*, the *mutwallis* were to receive six-twenty-eighths of the produce of the estate, a very considerable sum; and the plaintiff's claim to this suit was an appurtenant to the office of mutwalee was easily to be estimated in money." Accordingly, they were of opinion hat the plaint ought to have been endorsed on a stamp of proper value.[28] But, in a suit brought under S. 92, Civil Procedure Code, for the following reliefs: (1) that the present mahant may be removed, and a new mahant may be appointed in his place; and (2) that along with the mahant so appointed a committee may be formed to fulfil the objects of the trust, the property of the trust may be made over to the new mahant, and the newly appointed committee, and the list of said property may be prepared the Lahore High Court applied Art. 17, Cl. (ii) of the Second Schedule[29] as the plaintiffs had brought this suit in their capacity as members of the public, and did not claim any beneficial interest for themselves.

241. VII. SUITS NOT FALLING UNDER S. 7 (IV) (C). —A suit for declaration pure and simple, not combined with any other consequential relief, or further relief, will, of course, not come under this sub-clause, and is provided for under Sch. II, Art. 17 (iii), with a fixed fee of Rs. 10, which has been increased by some Amending Local Acts.[30] The same result will follow, where the consequential relief prayed for has been thrown in as a mere surplusage,[31] or is quite unnecessary.[32] A suit for declaration by a plaintiff not a party to the decree, that a certain decree is null and void, does not require an *ad valorem* Court-fee under S. 7 (iv) (*c*) of the Act.[33] A suit for mere declaration of title to

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(27) 23 W.R. 453=15 Beng. L.R. 167 (187) (P.C.).

(28) *Ibid.*

(29) *Beli Ram* v. *Ishardas*, 1928 Lah. 113=8 Lah. 730; following *Ramrupdas* v. *Sujaramdas*, 7 I.C. 92=12 C.L.J. 211=14 C.W.N. 932; also see *Thakuri* v. *Brahma Narain*, 19 All. 60=1896 A.W.N. 187; (Suit to remove a trustee competent on Rs. 10 stamp); cf. *Omrao Mirza* v. *M. Jones*, 10 Cal. 599; (a case not under old S. 539, Civil Procedure Code); also see *Sudalaimuthu Pillai* v. *Somasundaram*, 1925 Mad. 722=87 I.C. 25 [Not folld. 10 Cal. 599; Appd. 7 I.C. 92 (Cal.)].

(30) *See* Para. 131, Comments on "Scope of the sub-clause", *also see* 2 Bom. 219.

(31) *See* Para. 144, "Necessity for consequential relief"; *also see* 1 P.R. 1911; 1923 Lah.. 373; 5 L.L.J. 357; 50 I.C. 298; 27 Mad. 591; 35 I.C. 17; 36 Mad. 62=12 I.C. 170; 3 Pat. 795=1925 Pat. 44=80 I.C. 655, etc.; 1933 All. 350.

(32) *Ibid.*, 23 C.L.J. 592; 25 Cal. 49=2 C.W.N. 76; 76 I.C. 448=1923 Cal. 362=37 C.L.J. 499.

(33) 30 Cal. 788; 20 Bom. 736; 1 P.R. 1911, etc.

property under O. XXI, R. 63, Civil Procedure Code, does not fall under S. 7 (iv) (*c*); and a Court-fee of Rs. 10 is sufficient in such cases.[34] Suits which combine a relief for possession falling under S. 7 (v) of the Court-fees, have to be dealt with accordingly;[35] but where defendant is not in possession, or property is in *custodia legis*, the plaintiff cannot be required to pay for the relief by way of possession.[36] The question depends upon frame of the plaint but the substance, rather than the language of plaint, is considered.[37]

242. A vague and indefinite general prayer, for "any other relief" deemed suitable, does not convert a suit for mere declaration into one for a consequential relief, and S. 7 (iv) (*c*) will not apply.[38]

Illustrative cases.

243. (1) A suit which merely prays for a declaration that the plaintiff is entitled to require the defendant to account to him, and to permit him to inspect the books, without more, is not a suit coming under S. 7 (iv) (*c*), unless a prayer for injunction, etc., is added.[39]

244. (2) A suit by a plaintiff that he was a duly appointed member of the committee of management of a certain charitable institution, without alleging any title to possession claimed, has been treated as a mere suit for declaration.[40]

245. (3) A suit praying for restoration of attachment has been construed as a suit to set aside a summary order allowing objections, and the Court-fee payable is a fixed sum under Art. 17, Cl. (1) of the Second Schedule to the Act.[41]

246. (4) Claim suits under O. XXI, R. 63, Civil Procedure Code, are practically suits to set aside a summary order under Civil Procedure Code, allowing or disallowing an objection to attachment and sale in execution of property, and the case would come under Art. 17 (i) of Sch. II, to the Court-Fees Act.[42]

247. (5) A suit for the cancellation of a deed, which may be treated as null and void, against the plaintiff, who is no party to

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(34) 9 Lah. 167=103 I.C. 763=1927 Lah. 631.

(35) 1932 Mad. 605=139 I.C. 317.

(36) 24 I.C. 316; 68 I.C. 700=2 Pat. 125; 50 I.C. 298; 27 Mad. 59; 10 I.C. 531; 35 I.C. 17; 12 I.C. 170=36 Mad. 62, etc.

(37) *See* V. Pleadings in suits—Para. 155, *et seq.*

(38) *Gangadhar* v. *Debendrabala*, 5 Pat. 211=94 I.C. 22=1926 Pat. 249.

(39) *Manohar Ganesh* v. *Bawa Ramchandra*, 2 Bom. 219; *Raghunath* v. *Gangadhar*, 10 Bom. 60.

(40) *Murza Hyder Ali* v. *Hussain Raza*, 24 I.C. 316.

(41) *Dayachand* v. *Hemchand*, 4 Bom. 515; *Vithal Krishna* v. *Balkrishna*, 10 Bom. 610 (F.B.); also *Dildar* v. *Narain*, 11 All. 365; *Govinda* v. *Gajraj*, 13 All. 389.

(42) *Phulkumari* v. *Ghanshyam*, 35 Cal. 202 (P.C.); also refer and compare, *Chandradhari* v. *Tipon Prosad*, 43 I.C. 471 (Pat.).

it, or who never intended to execute the same, does not really ask for any consequential relief, and requires a fixed Court-fee as in suits for mere declaratory relief.[43]

248. (6) A suit by a member of a joint Hindu family for a declaration that a mortgage executed by another co-parcener of the joint family property is without consideration, or not binding on the property mortgaged, falls within the purview of Art. 17 (iii) of Sch. II of the Act.[44]

249. (7) A suit for cancellation of a mortgage bond executed by a third party, which cannot affect the plaintiff in possession and entitled to property in question, is not for a consequential relief, within S. 7 (iv) (*c*) of the Act.[45]

250. (8) A suit for declaration of title alone is maintainable, where defendant is not in possession of property claimed, and the property is in possession of Collector.[46]

251. (9) A suit for declaration that plaintiffs were occupancy *raiyats,* and not tenure-holders, and also for a declaration that the survey entry describing them as tenure-holders is wrong and not binding on them, is substantially a suit for mere declaration without consequential relief, if the redundant prayer is disregarded.[47]

252. (10) A suit for declaration of title, with recovery of possession of certain revenue-paying estates, on the ground of irregular sale proceedings in execution of a mortgage decree, alleged to have been previously adjusted, is a suit for possession of land within the meaning of S. 7 (v) (*a*) of the Court-Fees Act, and is not liable to *ad valorem* duty under S. 7 (iv) (*c*) of the Act.[48]

253. (11) Similarly, a suit by a joint owner of property, for recovery of possession of property sold without plaintiff's consent, or authority, does not require a prayer for declaration of invalidity of sale, or the cancellation of the sale-deed, and amendment can be allowed omitting the relief by declaration and consequential relief.[49]

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(43) *Umarannessa Bibi* v. *Janurannessa Bibi,* 37 C.L.J. 499.

(44) *Shamdas* v. *Churndas,* 78 I.C. 783=1925 Lah. 90.

(45) *Karam Khan* v. *Doryai,* 5 All. 331 (F.B.); *Arunachellam* v. *Rangasami,* 38 Mad. 922 (F.B.); *Shamdas* v. *Charudas,* 78 I.C. 782=1925 Lah. 90; *Venkata Ramani* v. *Narayansami,* 87 I.C. 660=1925 Mad. 164; but compare, *Parvati Bai* v. *Visvanath,* 29 Bom. 207.

(46) *Shidappa* v. *Rachappa,* 16 I.C. 1005=36 Bom. 628; affd. on appeal to P.C. in 43 Bom. 507=21 Bom. L.R. 459 (P.C.).

(47) *Tewari Kora* v. *Bhupat,* 50 I.C. 298=4 P.L.J. 302; compare *Midnapore Zamindary* v. *The Secretary of State,* 40 I.C. 96=44 Cal. 352 =21 C.W.N. 834.

(48) *Radha Kanta* v. *Debendra Narain,* 49 Cal. 880=70 I.C. 101= 1922 Cal. 506.

(49) *Rup Narain* v. *Bishwar Nath,* 44 All. 629=68 I.C. 261=1921 All. 358; also see *Gangadei* v. *Sukhdeo Prasad,* 84 I.C. 624=1924 All. 612 =47 All. 718; and In re *Seethayamma,* 48 Mad. 652.

254. (12) A suit by the reversioners praying for a declaration that a sale executed by a Hindu widow, with limited rights, is void and ineffectual against the reversioners, and for possession of the property after her death, is one for simple possession not falling under S. 7 (iv) (*c*), as the relief in respect of the sale-deed is unnecessary.[50]

255. (13) A suit by a Hindu son, governed by Mitakshara Law, to recover family properties, ignoring a mortgage executed by the father which does not bind the plaintiff's share in the property does not substantially seek the setting aside of the mortgage-deed, and the Court-fee need be paid as in a possessary suit on the value of the son's share.[1]

256. (14) A suit for avoiding a mortgage-decree to which the plaintiff was not a party, is a suit for mere declaration without a consequential relief.[2]

257. (15) A suit by a minor to recover possession of property, ignoring a void transaction by his guardian, is not a suit for cancellation of the deed, within the meaning of S. 7 (iv) (*c*).[3]

258. (16) A suit for the removal of a *mutwalli* and *Imamam* of a mosque, where plaintiffs are not seeking possession of the mosque properties for themselves, is not a suit falling under S. 7 (iv) (*c*).[4]

259. (17) A suit under S. 92, Civil Procedure Code, where the defendant denied the existence of the trust, and claimed title in himself, is one for declaration, but no consequential relief is involved, so as to make S. 7 (iv) (*c*), applicable.[5]

260. (18) A suit under S. 77 of the Registration Act, to direct registering of a Will disposing of a valuable property, is yet not a suit in which it is possible to estimate at money value the subject-matter of the suit,[6] and it is not a suit for a declaratory decree with consequential relief within S. 7 (iv) (*c*) of the Act.

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(50) *Tika Ram* v. *Salig Ram*, 57 I.C. 494=18 A.L.J. 903; also see *Ramsumran Prasad* v. *Gobind Das*, 2 Pat. 125=68 I.C. 700=1922 Pat. 615 (F.B.); cf. *Khetra Mohan* v. *Ganesh Lal*, 61 I.C. 565=2 P.L.J. 101=2 P.L.T. 607.

(1) *Veeramal Naidu* v. *The Official Receiver*, 117 I.C. 800; cf. *Shama Prasad* v. *Sheo Prasad*, 41 I.C. 95=5 P.L.J. 394=2 P.L.W. 173.

(2) *Sukh Dial* v. *Durga Das*, 113 I.C. 908=1929 Lah. 448; also see *Sri Ram* v. *Mathura Prasad*, 85 I.C. 349=1925 Oudh 500.

(3) *Veerararaghavalu* v. *Sreeramulu*, 112 I.C. 96=1928 Mad. 816=1928 M.W.N. 389; also see *Yu Hich Tun* v. *Yu Hoch*, 1933 Rang. 109 (Mortgage executed by minor, suit to set aside such mortgage is unnecessary. S. 7 (iv) (*c*) inapplicable].

(4) *Yad Ali* v. *Mubarik Ali*, 53 P.R. 1909=32 P.W.R. 1908.

(5) *Beli Ram* v. *Ishardas*, 8 Lah. 730=1928 Lah. 113.

(6) *Ramu Aiyar* v. *Sankara Aiyar*, 31 Mad. 89; *compare* 12 M.L.J. 88.

261. (19) Where the plaintiff sued simply for a declaration that the Will by the deceased is genuine, and that a certificate under Act, XXVII of 1860, was erroneously granted, it was held, that the suit does not fall under S. 7 (iv) (*c*) of the Act.[7]

262. VIII. VALUATION OF SUITS—A. Valuation for Court-fees.—VALUATION OF SUIT FOR COURT-FEE AT OPTION OF PLAINTIFF. It has been pointed out in Paras. 82 to 89, *ante*, that in all the six classes of suits described in S. 7, para. 4, the valuation of the relief claimed in the plaint rests with the plaintiff, who is free to value the relief as he chooses, and such valuation is to be finally accepted by the Court.[8] The Court-fee is payable *ad valorem* on the amount at which the plaintiff values the relief sought by him.[9] The value for purposes of Court-fee is to be determined first, and that for purposes of jurisdiction must follow on the same.[10] Where the plaintiff does not value the relief for Court-fee, the valuation for jurisdiction, may be adopted for Court-fee, unless the plaintiff amends the plaint, by valuing the relief for the purposes of Court-fee at a reduced amount.[11] When the plaintiff does not value the relief for Court-fee, or for jurisdiction, in a suit to set aside a decree as bad, the plaintiff should pay Court-fee upon the amount at which he values his loss and not on the whole decretal amount.[12] However, the plaintiff may make an amendment in the plaint that has been filed,[13] and shall have to pay Court-fee accordingly, *e.g.*, where the plaintiff fails to ask for a declaratory relief, but is found not to be entitled to possession without first obtaining a declaration;[14] or, where the plaintiffs fixed a high valuation for purposes of jurisdiction on the understanding that they would have to a pay a fixed Court-fee only.[15] The value for purposes of Court-

(7) *Gangamoni* v. *Gopal Chandra*, 19 W.R. 214.

(8) 4 All. 320; 2 Bom. 219; 17 Bom. 56; 43 Bom. 507=1918 P.C. 188; 44 Bom. 331; 32 Cal. 734; 50 Cal. 604=75 I.C. 474=1923 Cal. 311; 111 P.R. 1913 =22 I.C. 503 (F.B.); 9 Lah. 366=107 I.C. 609=1927 Lah. 890; 23 Mad. 490; 36 I.C. 831; 40 I.C. 620; (Mad.); 1931 Mad. 375=132 I.C. 129; 125 Judicial Record (N.-W.F.P.); 79 I.C. 668 (Nag.); 99 I.C. 868=1927 Nag. 375; 84 I.C. 201=1924 Rang. 378 (2); 61 I.C. 565=1921 Pat. 57; 1928 Oudh 260=107 I.C. 330; and 1930 Oudh 104; *cf.* 1933 Rang. 40 (Plaintiff cannot place arbitrary value); *but see* 1933 Lah. 246 (Court cannot revise it, however, arbitrary such value may be).

(9) 1885 A.W.N. 48; 31 Cal. 511; 44 I.C. 398=75 I.C. 567=1923 Cal. 329; 28 I.C. 79=38 Mad. 922 (F.B.); 85 I.C. 538=1925 Pat. 703; 120 I.C. 408=1930 Nag. 20; 117 I.C. 701=1929 Cal. 141; 10 Pat. 432 =1931 Pat. 78=130 I.C. 46.

(10) 47 All. 501=87 I.C. 190=1925 All. 602; 22 I.C. 503=111 P.R. 1913 (F.B.); 1930 Cal. 686=58 Cal. 281=34 C.W.N. 870.

(11) 31 I.C. 807 (Cal.); 33 I.C. 624 (U.B.); 1931 Lah. 307=133 I.C. 120; 92 I.C. 730=1926 Mad. 591; 1932 All. 114; 1929 All. 308; 1931 Pat. 78=10 Pat. 432=13. I.C. 46.

(12) 30 I.C. 111=42 Cal. 370, (*Ganesh Bhagat* v. *Sarada Prasad*).

(13) *Sitaram* v. *Hanuman Prasad*, 1927 Pat. 413=100 I.C. 632=8 P.L.T. 145.

(14) *Bobrah Tula Ram* v. *Dwarka Das*, 1928 All. 248=50 All. 610= 26 A.L.J. 316.

(15) *Kamla Prasad* v. *Jagarnath Prasad*, 1931 Pat. 78=10 Pat. 432= 130 I.C. 46; *also see* 111 P.R. 1913 (F.B.).

fee and jurisdiction is to be the same under S. 8 of the Suits Valuation Act. The reliefs for declaration, and consequential relief, may be valued as a whole, the plaintiff having the right and duty to put such one single entire sum as representing the value of the total relief sought by him in the suit.[16] The two reliefs may not be capable of independent valuation, or they may be so connected together as not to be regarded separately, and a combined valuation is not objectionable.[17] Where the suit was valued for purposes of jurisdiction at Rs. 2,100, being Rs. 2,000 for the declaration, and Rs. 100 for an injunction, and the value for declaration was deliberately raised, the Court held that the plaintiffs were bound to pay Court-fee on the sum of Rs. 2,100.[18] Similarly, in *Mani Lal* v. *Thakar Radhey Gopal*, the Allahabad High Court observed, that "if for purposes of jurisdiction the plaintiff sets a high value on the relief by way of declaration, and a merely nominal value on the relief by way of injunction", the relief sought" on which the Court-fee must be levied is the sum total of the two reliefs.[19] It was held by the Madras High Court in *Azimuddin* v. *Kadirsa Rowther*,[20] that the plaintiff is entitled to value the injunction relief arbitrarily, and such value is conclusive.[21] Where the plaintiff has wrongly valued the declaration and the consequential relief of injunction separately, and given the sum of the two valued as the value for purposes of jurisdiction and Court-fee, the plaintiff should be required, by amendment, to value the consequential relief of injunction alone under the last sentence of S. 7, Cl. (4) of the Court-Fees Act, and to mention that value in that plaint as the value for purposes of jurisdiction and Court-fee.[22] In Allahabad case, of *Mt. Jogeshra* v. *Durga Prasad Singh*,[23] the plaintiff had put a value of Rs. 6,800 on the first relief as to the decree to be set aside, and the second relief of injunction was valued at Rs. 100 only, and he was required to pay Court-fee on the total amount of Rs. 6,900, *ad valorem* both for the Court below, and in appeal. Thus, where the reliefs by way of declaration, and consequential prayer are separately valued, the proper Court-fee to be levied is on the total valuation of both the reliefs, which together make the case fall under S. 7 (iv) (*c*) of the Act. And, if the consequential reliefs prayed for are more than one, each one of the consequential reliefs has to be valued separately, and the Court-fee payable is on the aggregate

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(16) In the matter of *Kalipada Mukharjee*, 1930 Cal. 686=58 Cal. 281 =34 C.W.N. 870.

(17) *Rajgopala Naidu* v. *Vijayraghavalu*, 25 I.C. 683=38 Mad. 1184.

(18) *Gurdwara Mahaat Jowala Singh* v. *Kala Singh*, 1931 Lah. 307= 133 I.C. 120=32 P.L.R. 193.

(19) 47 All. 501=1925 All. 602.

(20) 43 I.C. 995=1918 M.W.N. 40; *cf.*

(21) *Chelasami Ramiah* v. *Chelasami Ramaswami*, 18 I.C. 363=24 M. L.J. 233=13 M.L.T. 128=1913 M.W.N. 105, folld. in 43 I.C. 995= 1918 M.W.N. 40.

(22) *Azimuddin* v. *Kadirsa Raother*, 43 I.C. 995=1918 M.W.N. 40, following *Krishna Mallar* v. *Secretary of State*, 25 I.C. 375=1914 M.W.N. 767=16 M.L.T. 516.

(23) 24 I.C. 679=36 All. 500.

value of the consequential reliefs, and declaration, *viz.*, on the total valuation of the suit, as stated by the plaintiff.[24]

263. VIII. B. VALUATION FOR JURISDICTION.—VALUATION OF SUIT FOR JURISDICTION, IS THE SAME AS FOR COURT-FEE. It has been seen above the plaintiff is entitled to put his own valuation to a suit for declaration and consequential relief, falling under S. 7 (iv) (*c*) of the Court-Fees Act, and, the jurisdiction of the Court would depend on the valuation put by the plaintiff.[25] Their Lordships of the Privy Council have affirmed the principle, previously applied by the High Court of Bombay, that "where a plaintiff sues for a declaratory decree and asks for a consequential relief, and puts his own valuation upon that consequential relief, then for the purposes of Court-fee, and also for the purposes of jurisdiction, it is the value and the plaintiff puts upon the plaint, that determines both".[26] But, the Oudh Chief Court, observed in *Rajendra Baksh* v. *Babu Rani*, that cases, cited from different High Courts allow arbitrary under-valuation by the plaintiff, in suits under S. 7 (iv), but a case of arbitrary and exaggerated over-valuation, where a plaintiff has sought to bring his suit in a Court of higher jurisdiction by falsely overestimating the value of his claim, should be met by bringing into use the Court's extraordinary powers, under S. 151, Civil Procedure Code.[27] It may also be noted that so far as Madras Presidency is concerned where the subject-matter of dispute is immovable property, S. 6 of Madras Act V of 1922, requires that the valuation put by the plaintiff should not be less than half the value of the immoveable property concerned.[28] It is, however, unnecessary in such a case to have the whole of the property valued. It would be sufficient if only such portion of the property, as is the subject-matter of the dispute, is valued.[29] Under rules of the High Court, the Court-fee and the jurisdictional value of some suits has been fixed within certain limits; and the plaintiff has to keep within those limits, when valuing the relief sought, with reference to S. 9 of the Suits Valuation Act, *e.g.*, in suits for declaration with consequential relief, in the nature of an injunction.[30]

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(24) *Azimuddin* v. *Kadirsa Rawther*, 43 I.C. 995, *supra*. (*Held*, that "If along with the injunction relief, additional consequential relief or reliefs are prayed for, they should, of course, be also valued according to law.)

(25) *See* Para. 262, *ante*; also see *The Official Trustee of Bengal* v. *Gobardhan Guchait*, 118 I.C. 357=33 C.W.N. 231.

(26) *Sunderbai* v. *The Collector of Belgaum*, 52 I.C. 897=43 Bom. 376 (P.C.)=21 Bom. L.R. 1148=L.R. 46 I.A. 15.

(27) 107 I.C. 330=1928 Oudh 260.

(28) *Ambalam* v. *Ramachandra*, 89 I.C. 930=1925 Mad. 1143=21 L. W. 699.

(29) *Ibid.*, 89 I.C. 930, *supra*.

(30) *Khair Ahmad* v. *Mir Ahmad*, 13 I.C. 408=93 P.L.R. 1912; compare, *Raj Krishna Dey* v. *Bepin Behari*, 17 I.C. 162=40 Cal. 245 (Cal.); (Arbitrary value not allowed, and plaintiff required to pay Court-fee on the valuation stated for purposes of jurisdiction); and also cf. *Harihar* v. *Shyamlal*, 21 I.C. 404=40 Cal. 615.

It has been held by the Punjab Chief Court, in *Barru* v. *Lachhman*,[31] that "where the suit relates to land or to an interest in land of which the value has been determined by the rules under S. 3 of the Suits Valuation Act, the amount at which for purposes of jurisdiction the relief sought in the suit is valued, cannot exceed the value of the land or interest as so determined (S. 4 of the Suits Valuation Act)"; and "when the value of the subject-matter of the suit has been determined by rules made under S. 9 of the Suits Valuation Act, the value of such suits for purposes of the Court-fees and of the Suits Valuation Act shall be as determined by such rules".

264. C. VALUATION IN APPEAL.—COURT-FEE PAYABLE ON THE MEMORANDUM OF APPEAL, is the same as that paid on the plaint in the suit. In a suit to set aside a trust-deed, the defendant may have no personal interest at all, and yet the subject-matter of the appeal may be as valuable as the subject-matter of the suit.[32] The defendant in his appeal should not depart from such original valuation, given by the plaintiff in his plaint, where the subject-matter continues to be identical.[33] The reference to appeal in the last paragraph but one of the sub-section may well apply to the case in which the SUBJECT OF THE APPEAL is not co-extensive with the subject-matter of the suit, in which case it would be unjust that the party appealing should be bound by the original valuation.[34] Where a decree awards possession on the condition that the plaintiff do pay off all incumbrances on the property, and the plaintiff appeals against the portion of the decree requiring him to pay off all incumbrances, the Court-fee payable on the memorandum of appeal must be *ad valorem* on the value of the incumbrances.[35] An appellant who claims on appeal that a portion of the property is not liable to be sold in execution of a mortgage-decree, must pay *ad valorem* Court-fee on the appeal.[36] The reason is that the relief which the appellant asks is not in the nature of a declaratory relief, but also aims at the consequential relief of the exemption of property from sale in pursuance

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(31) 111 P.R. 1913=22 I.C. 503 (F.B.).

(32) *Mohamed Masik* v. *Malkai*, 10 Cal. 380; also see *Satish Chandra* v. *Kalidasi*, 68 I.C. 577=1922 Cal. 203; (Where the suit was for cancellation of a deed, valued at Rs. 1,21,360 and the appeal was alleged to be "for a declaration" on Rs. 10 stamp; held that an appeal directed against a comprehensive decree cancelling the partition deed, determining a question of title to properties, and directing partition of all the properties in suit, and making the defendant liable for accounts, could not be described as an appeal for declaration merely.

(33) *Samiya Mavali* v. *Minammal*, 23 Mad. 490=10 M.L.T. 240.

(34) *Ibid.*

(35). *Kishendutt Misser* v. *Kastu Pande*, 57 I.C. 481=5 P.L.J. 455 =1 P.L.T. 738.

(36) *Sheoraja* v. *Debin Din*, 5 O.L.J. 663=48 I.C. 535.

of the mortgage-decree.[37] Similarly, where in a suit for sale on a mortgage, one of the defendants claimed priority in respect of a charge in her favour, and the Court decided that the plaintiff's mortgage was prior in date, and the defendant appealed seeking in her appeal that her security should have priority, it was held that the defendant must pay *ad valorem* Court-fees on the amount of her mortgage inasmuch as she was seeking a declaration with consequential relief.[38] To the same effect, is the decision in *Kundan Lal* v. *Duli Chand*, where defendants in a suit for sale on a mortgage, impleaded as subsequent mortgagees, claimed to be prior mortgagees, and appealed against the decree in plaintiff's suit praying for a declaration that they were prior mortgagees, the relief sought in appeal was taken for a declaration with consequential relief, liable to Court-fee *ad valorem*, under S. 7 (iv) (*c*) of the Act.[39] The Court-fees on appeal must be regulated by a consideration of the RELIEF SOUGHT IN APPEAL. For instance, where in a suit for the release of certain property from attachment, after a claim made by the plaintiff in respect of that property was rejected, in which the ostensible owner is joined as a party to the suit, being in alleged wrongful possession of the property, and the plaintiff succeeds, the attaching creditor's appeal would be only against the declaratory relief on Rs. 10 only, but if the ostensible owner appeals, the Court-fee would be calculated upon the value of the property.[40] Further, the nature of the reliefs sought MAY VARY AT THE STAGE WHEN APPEAL IS PREFERRED, and the Court-fee leviable will be upon the altered relief in appeal.[41] For example, where in a suit for declaration, temporary injunction as a consequential relief was prayed that until the disposal of the suit, the parties should not proceed with the *butwara* case, and the claim decreed was purely a declaratory relief, it was held that an appeal directed against the declaration made in the decree, was for a declaration without any consequential relief, and the suit should be treated as falling under Art. 17, Sch. II of the Act.[42] Here the consequential relief no longer existed, and hence a non-existent relief could not be valued, even arbitrarily under S. 7 (iv) (*c*). But, conversely, where a declaratory relief asked in the plaint had not been granted, and the decree passed was one for recovery of possession of property paying annual revenue to Government, the defendants were held entitled to APPEAL AGAINST

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(37) Per Lindsay, J., in 5 O.L.J. 663=48 I.C. 535, *supra;* citing *Kesavarapu* v. *Kota Reddi*, 30 Mad. 96=16 M.L.J. 458 (F.B.); followed in *Jugal Pershad* v. *Parbhu Narain*, 8 I.C. 1145=37 Cal. 914.

(38) *Moti Begam* v. *Har Prasad*, 47 I.C. 311=16 A.L.J. 81.

(39) *Kundanlal* v. *Duli Chand*, 54 All. 347=140 I.C. 39=1932 All. 221=1932 A.L.J. 45.

(40) *Chandradhari* v. *Tripan Prasad*, 43 I.C. 971 (Pat.).

(41) *Neka Tewari* v. *Kishun Prasad*, 80 I.C. 563=3 Pat. 640=2 P. L.R. 193=1924 Pat. 582.

(42) *Ibid.*, 3 Pat. 640=80 I.C. 563=1924 Pat. 582, *supra.*

THE DECREE AS IT STOOD, and to value their appeal[43] for the purposes of Court-fees, under S. 7 (v) (*a*) of the Act. Where a mortgage-decree was passed with a direction that a charge on the mortgaged property held by one of the defendants was liable to be sold in execution of the decree, and the defendant preferred an appeal praying for modification of the decree by granting a declaration that the plaintiffs were not entitled to get his right sold, the PRAYER IN APPEAL was held to clearly amount to a claim not merely for declaration, but also for a consequential relief which was in no way superfluous; accordingly, the case was governed by S. 7 (iv) (*c*) and the Court-fee was to be paid *ad valorem* in appeal on the amount at which the relief sought was valued in the memorandum of appeal.[44]

265. VII. D. VALUATION UNDER MADRAS AMENDMENT.—In cases falling under S. 7 (iv) (*c*), of the Court-Fees Act, *i.e.*, suits to obtain a declaratory decree or order where consequential relief is prayed, where the relief sought is with reference to any immoveable property, a minimum value of half the value of the immoveable property calculated as in manner provided in para. V, of analogous provisions, Arts. 2 and 4, Sch. I, is provided.[45] Accordingly, where a person brought a suit as beneficiary under certain trust, in order to recover certain properties forming the subject-matter of the trust which had been alienated by the trustees, one by sale, one by mortgage, and the remainder by lease, Art. 17-*B* was held inapplicable, and the case was governed by S. 7 (iv) (*c*), and the Court-fees was held payable according to the proviso which applies to the Madras Presidency, to be calculated in the manner provided by para. (5) of the section, and not at half the market-value of the properties.[46] Similarly, where the plaintiffs sued for possession of a certain share in the family property, and for a declaration that a previous partition and alienation made by the other members of the family are not binding on the plaintiffs, the suit was held to be for declaration as only ancillary to the prayer for possession, and the case was governed by S. 7 (iv) (*c*) of the Court-Fees Act, as to which the Madras Amendment applied, *i.e.*, the valuation for purposes of Court-fees was one-half of the value of the immoveable property affected by the declaration, valued as provided by S. 7, Cl. (5) and not by S. 7 (iv-*A*).[47] It has been explained in In re *Ventikrishna Pattar*,[48] that the Madras proviso applies

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(43) *Rup Naraim* v. *Bishwa Nath Singh*, 68 I.C. 265 (267)=44 All. 629=1922 All. 358=20 A.L.J. 587.

(44) *Makund Ram* v. *Ruqiya Khatun*, 131 I.C. 39=1931 All. 251=1931 A.L.J. 150.

(45) *See* Comments, Para. 132, *ante*.

(46) *Venkatalal* v. *Kosaldasu Bavaji*, 1931 Mad. 24=130 I.C. 449=61 M.L.J. 39=33 M.L.W. 206.

(47) *Koraga Gowda* v. *Somappa Gowda*, 140 I.C. 585=1932 M.W.N. 1322=36 L.W. 793=1933 Mad. 93.

(48) 1927 Mad. 348=100 I.C. 263=52 M.L.J. 121=25 M.L.W. 158 =38 M.L.T. 18.

where the question of title is not incidental, as in *Vaiyapuri Chetty* v. *Ramchandra Thevar*,[49] but, where the question of title is not raised at all and the relief sought is the DECLARATION OF A RIGHT OF EASEMENT, which refers to no immoveable property that can be possessed as contemplated by Cl. (5), the Madras proviso cannot be made applicable.

266. VIII. E. PARAGRAPH IV-A.—The Court-Fees Amendment (Madras) Act V of 1922, adds PARAGRAPH IV-A between paras. IV and V of the Principal Act. Para. IV-A runs as follows:—

"In a suit for cancellation of a decree for money or other property having a money-value, or other document securing money or other property having such value, according to the subject-matter of the suit, and such value shall be deemed to be if the whole decree or other document is sought to be cancelled, the amount or the value of the property for which the decree was passed or the other document executed, if a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property."

267. The paragraph consists of TWO PARTS, the first part specifies the classes of suits to which this provision is applicable. The provision is not meant to be exhaustive, or co-extensive with S. 7 (iv) (*c*) of the Court- Fees Act and it embraces *firstly*, suits for the cancellation of a decree, for (*a*) money, or (*b*) other property having a money-value; and, *secondly*, suits for the cancellation of other document securing (*a*) money, or (*b*) other property having a money value. The second part of the paragraph lays down the rule as to computation of the value of such suits for the purposes of Court-fee.

268. This new paragraph is quite different from clauses (iv) (*a*), (*b*) or (*c*) of the Court-Fees Act, and does not provide for a mode of calculation of value of property, which is not the market-value, but the STATUTORY VALUE where it is fixed by the Act.[50] The proviso merely introduces A DOWNWARD LIMIT below which consequential relief sought on declaratory decrees, in respect of immovable property shall not be valued.[1] This fixing of a minimum value in suits of the classes specified in the proviso is a curtailment of the privilege of the suitors to value suits for declaration with consequential relief, at their option.[2]

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(49) 1925 Mad. 1143=89 I.C. 930=21 M.L.W. 699; (The words "with reference to", construed to mean "involving the possession of").

(50) *Venkata Siva* v. *Venkata Narasimha*, 1932 Mad. 605=139 I.C. 137=63 M.L.J. 764; also see *Doraiswami Reddiar* v. *Thangavelu Mudaliar*, 119 I.C. 38=1929 Mad. 668.

(1) *Ibid.*, 1932 Mad. 605; also see *Alagir* v. *Srinivasa*, 91 I.C. 709=1925 Mad. 1248=50 M.L.J. 406; (Value of suit is value of property for which a document was executed).

(2) 1932 Mad. 605=139 I.C. 137, *supra*.

269. THE OBJECT.—The suits falling under S. 7 (iv) (*a*) would cover suits to set aside decrees for money, or other property having a money-value,[3] and Court-fee has to be paid under the new sub-section, which is a special provision, excluding the application of the general classification, with a value more favourable to plaintiff.[4] THE OBJECT was to provide for additional revenue, and no attempt was made by the Madras legislature "to revise the Act so as to reconcile conflicting decisions or to settle controversial questions".[5]

270. THE APPLICATION OF PARAGRAPH.—Where the decree that is sought to be set aside is not of the class referred, *viz.*, it is not one for money, or other property having a money value, or secondly, where the document sought to be cancelled is about property which has no money value, this sub-clause would be inapplicable. But the clause would apply to a suit by minor sons of a Hindu father, to set aside alienations made by the father not only as the manager of a joint Hindu family, but also as their guardian, which are *prima facie* good, unless it can be established that the alienations were for unnecessary or illegal purposes.[6] Where a reversioner seeks to set aside a decree against him and the widow, the claim is to be treated as falling under S. 7 (iv) (*a*), and the value of the immoveable property is to be calculated under S. 7 (v) (*b*) at ten times the revenue.[7] Where a purchaser sued for a refund of Rs. 1,000, the part purchase-money paid by him in cash, on the ground that the defendant had played a fraud on her by suppressing important facts, and prayed for a declaration that the sale-deed executed in his favour, as also the mortgage-deed for Rs. 1,300, the balance of sale-consideration executed by him, were invalid, it was held that the main relief claimed was really the setting aside of the conveyance of the immoveable property, and the claim for money was only ancillary to it; and the new clause applied to the case and Court-fee had to be paid on the total purchase-money of Rs. 2,300.[8] Where a suit for possession of zamindary property, and maintenance was withdrawn under a compromise decree, so far as zemindary property was concerned, and only maintenance was awarded under the decree, and later a suit was filed to set aside the compromise decree, it was held that the decree did not secure to the plaintiff anything except the maintenance awarded, and no immoveable property was secured. Consequently, that the proper Court-fee payable was that payable under Art. 17-*A*, Sch. II of the Court-

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(3) *Venkata Siva* v. *Venkata Narasimha*, 1932 Mad. 605=139 I.C. 137 =63 M.L.J. 764.

(4) *Ibid.*, per Annanthakrishna Ayyar, J.

(5) See *Fort St. George Gazette*, dated 7th February, 1922, Part IV, p. 20.

(6) *Alagar Aiyangar* v. *Srinivasa Aiyangar*, 1925 Mad. 1248=91 I.C. 709=22 M.L.W. 515=1925 M.W.N. 777=50 M.L.J. 406.

(7) *Venkata Narasimha* v. *Chandrayya*, 105 I.C. 171=1927 Mad. 825 =53 M.L.J. 267=26 L.W. 159=39 M.L.T. 193.

(8) In re *Lakshmi Ammal*, 1926 Mad. 96=91 I.C. 729=49 M.L.J. 608=1925 M.W.N. 826.

Fees Act, as amended by the Madras Act V of 1922. In this case the ratio decidendi was that the effect of the setting aside of the compromise decree was that the suit which had been withdrawn would have to be proceeded with, but the right to prosecute a suit did not by itself give any property to the plaintiff, and S. 7 (iv) (*a*), would not be applicable to the case.[9] This paragraph will not apply where the decree sought to be cancelled is itself a declaratory decree, or one for restitution of conjugal rights, which is not capable of a money valuation. The paragraph would be equally inapplicable where the prayer for cancellation of the document is unnecessary, and may be ignored as a surplusage. But, where a person sues for setting aside a document to which he is a party, and adds a prayer for recovery of possession of the property, the fee leviable is under para. 4-*A*, where the Madras Amendment applies.[10] Similarly, where the document to be set aside, is one which *prima facie* binds the plaintiff, the suit treated as one for cancellation of an instrument will come under S. 7 (iv-*A*), *e.g.*, where, the mother, as guardian, under the Hindu law of her minor sons, executes a release deed on behalf of the minors, the release deed is not null and void, but only voidable at the instance of the minors, after attaining majority, and a suit by the minors for declaration, and injunction would be in substance a suit for the cancellation of release deed affecting minor's interest in immoveable property.[11] In *Govindan Nair* v. *Madhavi,* it was held by Ananthakrishna Ayyar, J., that in a suit to set aside partition deed so far as plaintiff's share is concerned, Court-fee is to be paid on plaintiff's share only.[12]

271. VALUATION.—The wording of the paragraph suggests that the valuation of the subject-matter of the suit, for purposes of the Court-fees is in accordance with the statutory mode of computation as provided for in S. 7 (v) as in the case of possessory suits. But there is some conflict of decisions on the point which may be noticed. In *Alagar Ayyangar* v. *Srinivasa,*[13] the case was an alienation of family property by a Hindu father not merely as manager of the family but also as guardian of his minor sons. The suit by the sons for a declaration that the alienation did not affect their share in the property was treated as a suit for cancellation of the sale-deeds, falling under S. 7, Cl. (iv-*A*), of the Court-Fees Act, as amended by the Madras Act V of 1922, and Court-fee was held payable on the amount of the

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(9) *Kulandai* v. *Indran,* 1928 Mad. 416=108 I.C. 539=51 Mad. 664 =55 M.L.J. 345=27 M.L.W. 286.

(10) Ref. and *cf.*, *Para.* 268, *ante.*

(11) *Doraiswami Reddiar* v. *Thangavelu Mudaliar,* 1929 Mad. 668= 119 I.C. 38.

(12) 1932 Mad. 491, distinguishing and explaining *Alagar Ayyangar* v. *Srinivasa Ayyangar,* 91 I.C. 709=1925 Mad. 1248, as not laying down that plaintiffs have to value their relief at the whole of the amount of the sale-deed and not simply with reference to the share claimed and relying on 8 I.C. 512 (F.B.) that in a suit for partition, the value of plaintiff's share is considered.

(13) 91 I.C. 709=1925 Mad. 1248=50 M.L.J. 406.

consideration for the alienation which was sought to be set aside. In *Veeraragavalu* v. *Sreeramulu*,[14] it was held by a Bench, that a minor has not got to set aside the transaction by a guardian in suing to recover the property; and that, he can ignore the transaction and merely pray for possession. That being so he does not seek cancellation of the instrument, and therefore, Cl. (4-*A*) of S. 7, Court-Fees Act, does not apply. The ruling of the single Judge in *Alagar Aiyangar* v. *Srinivasa Ayyangar*,[15] was not agreed to. The Court suggested the expunging of the unnecessary words "setting aside" from the plaintiff's prayer. In *Venkata Narasimha* v. *Chandrayya*,[16] (Krishnan and Odgers, JJ.,), the value of the suit, after excluding the moveable property as to which no relief was asked, was calculated by computing the value of the immoveable property under S. 7 (v) (*a*) at ten times the revenue. It was observed that the appellants were asking for the decree to be set aside, and the subject-matter of that decree so sought to be set aside was "the whole of the immoveable property in that suit". On the point being raised, "whether the market value of the property should not be taken for the purpose of this valuation, or whether the statutory value should be adopted", the Court expressed its view that "the latter is the proper course as there is nothing in the Act to show that the market-value is the value contemplated in S. 7 (iv-*A*)." It was held, accordingly, that "when there is in the Act itself a special rule as to valuing property in suits for Court-fees, it is proper to take that method of valuation in preference to any other method to get the value where there is no indication that any other method should be adopted".[17] The opposite argument is "that the proviso and para. IV-A, were both enacted by the local legislature at Madras at the same time, and the mention of the methods of computation "as under paragraph V", in the proviso and the absence of any such mention of para. (v) in para. (iv-*A*), shows that valuation as per para. (v) was not contemplated in determining the value under para. (iv-*A*)". This argument is hardly convincing, as the legislature could have easily used the expression "market-value" instead of the word "value", if any real difference between the mode of computation in para. (iv-*A*) was intended. The argument that the word "value" without more means only market-value, in the absence of definition of the term in the Act to the contrary, is not conclusive, or even satisfactory, but it seems to be supported by the observations of Wallace, J., in *Veeranna* v. *Butchayya*,[18] that "where the subject-matter

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(14) 1928 Mad. 816=112 I.C. 96=1928 M.W.N. 389.

(15) 91 I.C. 709=1925 Mad. 1248=50 M.L.J. 406.

(16) 105 I.C. 171=1927 Mad. 825=53 M.L.J. 267=26 L.W. 159 =39 M.L.T. 193.

(17) *Ibid.*, 105 I.C. 171=1927 Mad. 825, *supra.*

(18) 50 Mad. 646=1927 Mad. 563=101 I.C. 379=52 M.L.J. 381 =25 M.L.W. 440. (*Reld.* in *Dhanabaggiammal* v. *Mari Ammal*, 1933 Mad. 671). *Held*, by Ananthakrishna Ayyar, J., that where plaintiff alleged that the defendant had a life interest in the property, and prayed for relief on that basis, the value for jurisdiction would depend on the market-value of

of the suit is so related to things which have a real money-value that the relief asked for will affect these, then the value of the suit for the purpose of jurisdiction is to be taken as the market-value of the property affected''. This has been relied upon in 1932 Mad. 671, by Anantakrishna Ayyar, J. In view of this conflict of views, the question should engage the attention of the legislature, meanwhile the interpretation most favourable to the subject, has to be adopted.

S. 7 (4) (*d*)—*Suits to obtain an injunction.*

Synopsis.

1. Legislative changes.
2. Scope, and applicability of the sub-clause.
3. Different kinds of injunction.
   I. Temporary:
   II. Perpetual:
   III. Mandatory.
4. Valuation of suits under Cl. (d).
   A. for Court-fee.
   B. for Jurisdiction:
   C. Privy Council Appeals.

Comments.

272. **I. LEGISLATIVE CHANGES.**—THE BOMBAY AMENDMENT. This sub-clause has been amended by Bombay Act II of 1932, by the addition of the words ''or other consequential relief.'' These words are quite confusing, and it is not clear what exactly the Legislature contemplated by *enlarging* the scope of the sub-clause by the addition of these words. The suits to obtain an Injunction, falling under Cl. (*d*), are those where the prayer for Injunction is the only relief, or an independent substantive relief to be separately valued. Injunction as a consequential relief, to a suit for declaration, will fall under S. 7 (4) (*c*) of the Act. If the Legislature meant this sub-clause to embrace some consequential reliefs, which as consequential relief would fall under sub-Cl. (*c*), to come under sub-Cl. (*d*) when they can be asked for as distinct and independent entity to be prayed for as a separate relief, the word *other* should not have been used. This implies that instead of enlarging the scope of this sub-clause, by the amendment, the object of the Legislature was to *restrict* the expression 'Injunction' to consequential reliefs only. The word ''*or*'' also presents some difficulty, for it is not clear whether the consequential relief is not to be an additional relief in the suit, but only alternative to prayer for Injunction as the principal relief in the case. The expression could not have been intended to make this clause a surplusage, nor inconsistent with the accepted interpretation of the sub-Cl. (*d*) which is commonly understood to deal with Injunctions as the main relief in the case. But the language used is extremely defective and it certainly fails readily to convey what the Bombay Legislature really meant by making this change in the wording of the sub-clause. As it is worded, all commentators have found the amendment to be an enigma.

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the properties alienated. The case in *Kattiya Pillai* v. *Ramaswamia*, 119 I.C. 35=1929 Mad. 396, was distinguished.)

273. II. SCOPE OF THE SUB-CLAUSE.—This sub-clause is concerned only with mandatory, or perpetual Injunctions, when they are claimed as the only relief,[19] or as an additional relief, separate from the other prayer in the suit.[20] Where Injunction is asked for, as a consequential relief to a declaratory decree, the case would fall under S. 7, para. (iv), sub-Cl. (*c*). In *Guruvajamma* v. *Venkatakrishnama*,[21] the suit for only one relief by way of perpetual Injunction restraining the defendants from opening certain windows in their premises which adjoined the plaintiff's house, or from preventing the construction of a wall by plaintiff against the said windows, for the purpose of erecting an upper storey to plaintiff's house. Similarly, in *Dongarsi Das* v. *The Municipal Committee*[22] the suit was for an Injunction restraining the defendant, Municipal Committee from demolishing a *thara* not constructed in accordance with sanction, the prayer was for Injunction as the sole relief sought by plaintiff in the suit. But Injunction may be claimed as an independent relief, along with another claim in the suit. For instance, in *Jogalkishar* v. *Bindeshri Chaubey*,[23] where (*a*) the plaintiff sued to recover possession of a piece of land, and also (*b*) asserted his title to an easement of roof water over the defendant's land and (*c*) he claimed an Injunction for the removal of same buildings made by the defendant on the land in suit, the prayer as to injunction was an additional independent relief to be separately valued under S. 7 (iv) (*d*), while the suit was to be valued for relief (*a*) under S. 7 (v) (*d*), and for relief (*b*) under S. 7 (iv) (*e*), of the Court-Fees Act. Similarly, in *Thakuri* v. *Brahma Narain*,[24] where the suit, brought under S. 539 of the old Civil Procedure Code, embraced a claim for a declaratory decree to the effect that the property in suit was endowed property; and also a prayer for the appointment of the plaintiffs as trustees; and, there was a further prayer for an injunction against interference with the discharge of the duties of the plaintiffs as Superintendents: Court-fee was payable in respect of the last prayer separately under S. 7 (iv) (*d*) of the Act, according to the amount at which the relief sought was valued in the plaint. Likewise, in *Parumal* v. *Ailmal*,[25] where A, as the heir of one D, brought a suit against B and C, on two distinct causes of action for money against B, and against C, the suit was for declaration of title with injunction; and the suit, therefore, was one under Cl. I, and Cl. IV (*d*) of S. 7 of the

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(19) *Guruvajamma* v. *Krishnama*, 24 Mad. 34; also see, *Dongarsi Das* v. *The Municipal Committee*, 116 I.C. 908=1929 Lah. 566.

(20) *Jugal Kishore* v. *Bindeshri*, 4 All. 320, *Thakuri* v. *Brahma Narain*, 19 All. 60; *Parumal* v. *Ailmal*, 17 I.C. 44; and *Hari Shanker* v. *Kali Kumar*, 32 Cal. 734.

(21) 24 Mad. 34.

(22) 116 I.C. 908=1929 Lah. 566.

(23) 4 All. 320=2 A.W.N. (1882), 44.

(24) 19 All. 60=16 A.W.N. (1896), 187.

(25) 17 I.C. 44=6 S.L.R. 114.

Court-Fees Act, and was stamped *ad valorem* on each claim. In *Hari Sanker Dutt* v. *Kali Kumar Patra*,[26] the suit was by plaintiff claiming to be in possession of the whole of the jungle in question, and the relief which he sought was for a declaration of his title, and an injunction to prevent interference with his possession, and damages for the wood taken from the Jungle, and the value of the trees cut was separate, to which the relief otherwise claimed was added, valued at a certain figure by the plaintiff.

274. INJUNCTION COUPLED WITH OTHER RELIEFS.—It has been noticed in comments under the heading "*Declaration and Injunction*", that S. 7, Cl. 4 (*c*) applies where the prayer for injunction is being asked as a consequential relief.[27] Where, however, the relief of injunction is the only, or the main relief in the suit, and the other reliefs like declaration, or possession are only subsidiary and ancillary reliefs, which only pave the way to the grant of injunction as the principal claim, the case falls under S. 7 (iv) (*d*) of the Court-Fees Act.[28]

275. SUITS FALLING UNDER S. 7 (iv) (d).—The following suits have been held to fall under S. 7 (iv) (*d*) of the Court-Fees Act.

(1) A suit for declaration of right to use a site alleged to be occupied by plaintiff and others, and for declaration that the defendant Municipality had no right to use the site in such a manner as to deprive plaintiff, etc., of their right of user, to which is added a separate and independent prayer for an injunction to restrain defendants and their transferees from doing such act as would affect the property of plaintiff and her right of easement.[29] It was held that any nominal value permissible under terms of the Suits Valuation Act may be assigned to the latter portion of the suit (*vide* direction IV, issued under S. 9 of the Suits Valuation Act).[30]

(2) A suit for a permanent injunction restraining the defendant from cutting timber and undergrowth from a Jungle belonging to the plaintiff.[31]

(3) A suit by an allottee under a private partition, to stay subsequent partition proceedings brought under Reg. XIX

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(26) 32 Cal. 734=9 C.W.N. 690.

(27) 24 I.C. 679=36 All. 500; 17 Bom. 56; 18 Bom. 100; 33 Bom. 307; 32 Cal. 734; 34 I.C. 702; 44 I.C. 398; 13 I.C. 408; 111 P.R. 1913 (F.B.)= 22 I.C. 503; 100 I.C. 263=1927 Mad. 348; 1931 Mad. 69=129 I.C. 625; 79 I.C. 668=1924 Nag. 316; 94 I.C. 22=5 Pat. 211; 131 I.C. 808=1931 Pat. 195; 70 I.C. 852=16 S.L.R. 109.

(28) *See* para. 273, "*Scope*" of the sub-clause, *ante;* citing 24 Mad. 34; 116 I.C. 908=1929 Lah. 566; also 4 All. 320; 19 All. 60; 17 I.C. 44; and 32 Cal. 734.

(29) *Mt. Mulpulnissa* v. *Municipal Commissioner, Delhi,* 118 P.L.R. 1904.

(30) *Ibid.*

(31) *Raicharan Panda* v. *Kunj Behari Das,* 46 I.C. 884=3 P.L.J. 639.

of 1814, and to have his possession confirmed, held to be one for a declaratatory decree, or for something in the nature of an injunction.[32] It was held unnecessary to value the suit according to the value of the entire estate.[33]

276. INJUNCTION UNDER SPECIAL ACT.—A suit by a third person, under S. 149 (3) of the Bengal Tenancy Act, was held not to be a title suit, but of the nature of a suit for an injunction under the Specific Relief Act, or else a declaratory suit. The Court, (Tottenham and Norris, JJ.) agreed in holding that the suit in *Jagadamba Devi* v. *Protap Ghose*, was not a title suit, but Norris, J., did not think it necessary to express any opinion as to what sort of suit it was.[34] This ruling was considered, and explained in *Rubiun Nessa* v. *Gooljan Bibee*,[35] where it was held that a suit brought under such circumstances may be a title suit, where the plaintiffs have to go into their title to establish their right as to matter in dispute by reason of another rent suit. And, it was held in *Kazi Mahomad Mazhar* v. *Sheikh Kadir*[36] that in a suit under S. 149 of the Bengal Tenancy Act, unless the plaintiff establishes his title and possession he is not entitled to the order restraining paying out of the money under Cl. (3) of S. 149. A suit under this section is in the nature of interpleader suit, where the question of title and possession may have to be gone into incidentally.[37] But, it does not contemplate a suit for the establishment of the relation of landlord and tenant, beyond the necessity of deciding who is entitled to the money deposited in Court, and injunction restraining the payment of money is certainly an essential part of the case.[38-39]

277. III. DIFFERENT KINDS OF INJUNCTION.—Injunctions which may be granted by Courts, in the case of breach of an obligation arising from contract or trust are Temporary, perpetual, or, Mandatory.

278. TEMPORARY INJUNCTIONS.—A temporary injunction may be obtained, at any time after the commencement of a suit, and either before or after judgment, by application to the Court, to restrain the defendant from committing the breach of contract, or other injury of a like kind arising out of the contract or related to the property or right in suit. These applications under O. 39, R. 2, are evidently not covered by S. 7 (iv) (*d*) of the Court-Fees Act. They are not *suits* "to obtain an Injunction"; but *applications* made after the commencement of the suit, to obtain an order for the purpose of staying and preventing the wasting, damaging, or alienation of

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(32) *Joynath Roy* v. *Lall Bahadoor Singh*, 8 Cal. 126=10 C.L.R. 146.
(33) *Ibid*.
(34) 14 Cal. 537.
(35) 17 Cal. 829.
(36) 11 C.W.N. 128 (note).
(37) *Gurudas Rakhit* v. *Kumud Bandu Ray*, 7 C.L.J. 40 (notes).
(38-39) *Haranath Banerji* v. *Ananta Dasi*, 9 C.W.N. 492.

any property in dispute, pending the final disposal of the suit, or proceeding. These orders may be cast in mandatory form, where the circumstances of the case so require. A temporary injunction may also be asked in a case as a consequential relief. For instance, in *Gulabsinghji* v. *Lakshmansingji*[40] the suit for a declaration of plaintiff's shares in certain Taluqdari estates, prayed also for a temporary injunction to restrain defendant from cutting and removing timber from certain forests. In *Gangadhar Misra* v. *Rani Debendrabala*,[41] the *Patna High Court* held that the *ad interim* prayer is substantial prayer which makes the relief a consequential one bringing the case within S. 7 (iv) (*c*) of the Court-Fees Act. In the case of *Deokali Koer* v. *Kedar Nath*,[42] there was *ad interim* injunction in the trial court on the application of plaintiff, and that was construed by Sir Lawrence Jenkins, C.J., on appeal for declaration of title, as bringing the case within S. 7 (iv) (*c*) of the Act. In the above two cases, the *ad interim* injunction formed an item in the subject-matter of suit, or appeal.

279. **PERPETUAL INJUNCTIONS**.—Perpetual Injunctions are dealt with in Chapter X of the Special Relief Act. They may be granted, under S. 54 of the Specific Relief Act, subject to the other provisions 55 to 57 of the Act, to prevent the breach of an obligation arising out of a contract or trust, in certain specified cases. The defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an Act, which would be contrary to the rights of the plaintiff. Such suits would be covered by S. 7 (iv) (*d*) of the Court-Fees Act, for instance, where the prayer is that defendants be prohibited by perpetual injunction from cutting down and appropriating the trees in a jungle, which plaintiff owns;[43] or, where the relief sought is that the defendant Municipal Board may be restrained from interfering in any way with the construction of a *Chabutra* which the plaintiff desires to erect on a certain piece of land.[44]

280. **MANDATORY INJUNCTIONS**.—When it is necessary to compel the performance of certain Acts by the defendant, which the Court is capable of enforcing, with a view to prevent the breach of an obligation arising from contract, trust, or otherwise, the relief may be granted in a mandatory form. A temporary, or a perpetual injunction may both be granted in this form where the relief asked for by a plaintiff in a suit is for grant of a perpetual injunction, and also to compel performance of requisite acts in the mandatory form, the suit will be covered by S. 7, Cl. (iv) (*d*) of the Court-Fees Act. But, where the suit is for

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(40) 18 Bom. 100.

(41) 94 I.C. 22=5 Pat. 211=1926 Pat. 249.

(42) 15 I.C. 427=39 Cal. 704=16 C.W.N. 838.

(43) *Hari Sanker* v. *Kali Kumar*, 32 Cal. 734, *Rai Chann* v. *Kunj Behari*, 46 I.C. 884 (Cal.).

(44) *Bachhan* v. *The Municipal Board*, 94 I.C. 951=48 All. 412=1926 All. 423.

the setting aside of a lease, and to have the buildings erected on the land by the lessee demolished, the case is one for a declaratory decree, in which a consequential relief is sought, and falls within S. 7 (iv) (*c*) of the Act.[45] The case would fall under S. 7 (iv) (*d*) where the relief sought by demolition of certain buildings is independent of the relief by way of declaration, and a substantive claim.[45]

281. IV. VALUATION OF SUITS, UNDER Cl. (iv) (d): A: for Court-fees.—In a suit for injunction, falling under Sub-Clause (iv) (*d*), of S. 7 of the Act, the plaintiff has to value the claim, and Court-fee will be paid *ad valorem* on the amount stated in the plaint.

281. (a) Calcutta.—It was held in *Raicharu Panda* v. *Kunja Behari Das*,[46] by the CALCUTTA HIGH COURT, that the valuation of a suit for injunction is the amount at which the plaintiff values the relief sought. But, in *Krishna Das* v. *Hari Charan*,[47] the view taken by the CALCUTTA HIGH COURT was that the value of the relief cannot be arbitrarily fixed. But, the better view is that in a suit for injunction, Court-fee is to be computed according to the amount at which the relief is valued in the plaint.[48] The CALCUTTA HIGH COURT, however, feels inclined to take the view that the value to be put by the plaintiff on a plaint in a suit of this description "should be taken as the proper value unless it appears that the value so put is arbitrary and inconsistent with the value of the relief sought.[49] But compare, *Panna Lala* v. *Abdul Gani*,[50] where Mukerji and Guha, JJ., observe that even if a plaintiff ought not to be permitted to have his relief without paying adequate Court-fees yet, he in a suit coming under Sub-Clause (*c*) or (*d*) of S. 7, Cl. (iv), may justly say that his valuation of the relief is what he has to pay for. There is hardly any good reason why the words of S. 7, should not be applied as they are.[50]

281. (b) Lahore.—But this view is not shared by other High Courts. The LAHORE HIGH COURT, held in *Amirchand* v. *Hakim Ali*,[1] that where in a suit for an injunction restraining the defendants from demolishing and re-building certain houses, the Court-fee had been paid on Rs. 110 only, although the value was

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(45) *Jogal Kishore* v. *Bindeshri*, 4 All 320=2 A.W.N. (1882) 44 (F.B.)

(46) 46 I.C. 884 (Cal.).

(47) 10 I.C. 865=14 C.L.J. 47=15 C.W.N. 823.

(48) *Mohendra Sundar* v. *Dinobandhu*, 21 I.C. 771=19 C.L.J. 15; (Suit to restrain the defendant from interfering with the plaintiff in the Management of certain endowed property as its sole *Shebait*).

(49) *Rajabala Dasi* v. *Radhika Sharan Roy*, 79 I.C. 982=1924 Cal. 969=40 C.L.J. 150, also see *Girish Chandra* v. *The Secretary of State*, 105 I.C. 80=1928 Cal. 55, (Plaintiff's Valuation accepted so long as it is not inadequate or arbitrary.

(50) 34 C.W.N. 321=1930 Cal. 473.

(1) 69 I.C. 577=1924 Lah. 364.

stated for purposes of jurisdiction at Rs. 4,000, that the value for purposes of Court-fee was Rs. 110, and the Court ought to have asked the plaintiff to restate the value, but as it did not do so, Rs. 110 must be taken as the value both for purposes of Court-fee and jurisdiction. Similarly, in *Dongarsi Das* v. *The Municipal Committee, Fazilka*[2] in a suit for injunction against the Municipal Committee requiring it to refrain from demolishing a structure erected by the plaintiff, which did not fall under Rule IV of Ch. X of the Rules and Orders of the LAHORE HIGH COURT, but which came under S. 7 (iv) (*d*) of the Court-Fees Act, it was held that "the plaintiff was entitled to value the plaint for the purposes of Court-fee at any figure he chose".

281. (c) Bombay.—The BOMBAY HIGH COURT, in *Govinda Krishna* v. *Manmaya Lingaya*,[3] has held that in a suit for an injunction coming within S. 7, Paragraph IV (*d*), of the Court-Fees Act, the Court-fee has to be computed according to the amount at which the relief sought is valued in the plaint, "which valuation the plaintiff is entitled to fix himself." In that case he had valued the claim at Rs. 10 but also added another valuation of Rs. 500 for purposes of jurisdiction. It was held that "as the plaintiff was entitled under S. 7 of the Court-Fees Act to value his claim at Rs. 10, it was wholly unnecessary for the plaintiff to fix any value for the purposes of jurisdiction, as, by S. 8 of the suits Valuation Act, the value determinable for the computation of Court-fees and the value for purposes of jurisdiction shall be the same."[4]

281. (d) Allahabad.—In *Bachhan* v. *The Municipal Board of Mirzapur*,[5] where the suit was brought for the purpose of obtaining a declaration of title regarding a certain piece of land, for which a Court-fee of Rs. 10 was paid, and further relief was sought for a perpetual injunction restraining the defendant Municipal Board from interfering in any way with the construction of a *Chabutra* which the plaintiff desired to erect on the land in question, it was held that the Court-fee as regards the relief by way of injunction is regulated by S. 7 (iv) (*d*) of the Court-Fees Act, "which lays down that in a suit to obtain an injunction the

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(2) 116 I.C. 908=1929 Lah. 566. Also see *Jhanda Singh* v. *Gulabmal Bhagwandas*, 1933 Lah. 246, where in a case falling under S. 7 (iv) (*c*), of the Act, Tekchand, J., held that the Court has no power to revise the valuation given by plaintiff, inasmuch as the plaintiff can fix any value he likes howsoever arbitrary, fanciful or inadequate it may be.

(3) 59 I.C. 777=45 Bom. 567=22 Bom. L.R. 1450.

(4) *Ibid.*, citing *Bai Hiragavri* v. *Gulabdas Jamnadas*, (22 I.C. 71=15 Bom. L.R. 1123), the principle of which was approved of by the Privy Council in *Sunderbai* v. *Collector of Belgaum*, 52 I.C. 897 (898), 21 Bom. L. R. 1148, 43 Bom. 376, 46 I.A. 15 (P.C.), and not following *Rajkrishna Dey* v. *Bepin Behari Dey*, 17 I.C. 162=40 Cal. 245=16 C.L.J. 194=17 C.W.N. 591.

(5) 94 I.C. 951=48 All. 412=1926 All. 423=24 A.L.J. 478.

Court-fee shall be paid according to the amount at which the relief sought is valued in the plaint or Memorandum of Appeal''. As ''for purposes of jurisdiction the value of the thing claimed was Rs. 1,000'', and the suit had been instituted in the Court of Sub-Judge, the Court having regard to S. 8 of the Suits Valuation Act, held that the valuation was over Rs. 1,000, and the plaintiff had to pay Court-fee on Rs. 1,000, as reported by the office.

281. (e) Nagpur and Oudh.—In *Amdu* v. *Fazal*,[5-a] the Judicial Commissioner of Nagpur, has followed the view in *Harihar Prasad* v. *Shyam Lal*,[6] and *Dayaram* v. *Gordhandas*,[7] and its own earlier decision in *Krishnarao* v. *Chandrabhagabai*.[8] It declined to follow *Rajkrishna* v. *Bepui Behari*,[9] which had been expressly dissented in *Govinda Krishna* v. *Hanmaya Lingaya*,[10] by the Bombay Court, observing that the principle of Bombay decisions has been affirmed by their Lordships of the Privy Council in *Sunderbai* v. *Collector of Belgaum*.[11] Thus, the Nagpur Court was of opinion that the relief by way of injunction can be valued at any figure which the plaintiff likes. However, compare, the view taken in *Rajendra Babsh Singh* v. *Babu Ram*, by the Oudh Chief Court, that in cases of gross over valuation by plaintiff, where the relief sought falls under S. 7 (iv) (*c*), or S. 7 (iv) (*d*), of the Court-Fees Act, the Court has power to interfere under S. 151, Civil Procedure Code with plaintiff's absurd and outrageous misrepresentation as to the value of his suit in order to have it tried by a higher Court.[12]

281. (f) Madras.—In *Guruvajamma* v. *Venkata Krishnama*.[13] the Madras High Court held that the Court had no jurisdiction, on an objection by the defendant to plaintiff's valuation of his relief by injunction to frame an issue, and try the question of its proper valuation for purposes of determining its jurisdictional value.

281. (g) Patna.—In *Janki Sahay* v. *Lalbeharilal* the Patna High Court refused to interfere on revision with a valuation given by the plaintiff to a suit for injunction at Rs. 150, which the District Judge found to be a reasonable one.[14]

282. B: VALUATION FOR PURPOSES OF JURISDICTION.—Valuation for jurisdiction is to be the same as the

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(5-a) 99 I.C. 868=1927 Nag. 375: Citing 21 I.C. 404=40 Cal. 615; and 31 Bom. 73=8 Bom.L.R. 885: also 79 I.C. 668=1924 Nag. 316, and 59.

(6) 21 I.C. 404=40 Cal. 615.

(7) 31 Bom. 73=8 Bom.L.R. 885.

(8) 79 I.C. 668=1924 Nag. 316.

(9) 17 I.C. 162=40 Cal. 245=16 C.L.J. 194=17 C.W.N. 591.

(10) 59 I.C. 777=45 Bom. 567=22 Bom.L.R. 145.

(11) 52 I.C. 897=43 Bom. 376=21 Bom.L.R. 1148.

(12) 107 I.C. 330=1928 Oudh 260.

(13) 24 Mad. 34.

(14) 94 I.C. 103=1926 Pat. 334.

valuation for Court-fee fixed by the plaintiff at his option. See S. 8, Suits Valuation Act. Ordinarily, the valuation for purposes of Court-fee is fixed first, and the valuation for purposes of pecuniary jurisdiction of Court follows. But, where no value is fixed for purposes of Court-fee, or, where the plaintiff has by filing his suit in a certain Court, and by valuing the relief sought at a certain figure for purposes of jurisdiction, committed himself to the valuation of the suit at that figure, it will be taken to be the proper value of the suit, both for purposes of Court-fee and jurisdiction.

282. (a) Allahabad.—In *Kandhaiya* v. *Jagrani,* the High Court of Allahabad, observed as follows:—"..... it is quite true.....that the intention of the Legislature is that parties should first value their suits for purposes of Court-fees, and when this has been done, the valuation for purposes of Court-fee will, in all cases falling under the operation of S. 8 of the Suits Valuation Act, be the same for purposes of jurisdiction;....(See *Manni Lal* v. *Gopalji,* 47 All. 501), and if, treating the suit as one simply for an injunction, this being the substantial relief claimed, they (the plaintiffs) had put a valuation of Rs. 10 only on the relief sought, we should not be prepared to say that they would not have been within their rights, but, the plaintiffs committed themselves to the statement that they valued the suit" at a higher figure, which must be taken to be the value of the relief sought by plaintiff.[15] Similarly, in *Bachan* v. *The Municipal Board of Mirzapur,* it was held that under the provisions of S. 8 of the Suits Valuation Act, the valuation of a suit for an injunction for the purpose of Court-fees and of jurisdiction must be the same. But, as plaintiff had valued "the thing claimed" at Rs. 1,100, he was required to pay Court-fee on this amount.[16]

282. (b) Bombay.—The BOMBAY HIGH COURT, held in *Varunda Lakshmi* v. *Manegavri,*[17] that in suits where the value of the subject-matter must be determined according to the provisions of S. 8 of Act VII of 1887, the value for the computation of Court-fees, and the value for purposes of jurisdiction shall be the same where the plaintiff is entitled under S. 7 (iv) of the Court-Fees Act, to value his claim at any figure, it is wholly unnecessary for the plaintiff to fix any value for the purpose of jurisdiction, and a higher valuation put for purposes of jurisdiction was ignored in *Govinda Krishna* v. *Hanmaya Lingai.*[18] In this case the value for Court-fees at Rs. 10 was taken to be the value both for Court-fees and jurisdiction, although plaintiff had stated Rs. 500 as the value for purposes of jurisdiction.

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(15) 79 I.C. 358=46 All. 419.

(16) 94 I.C. 951=48 All. 412=1926 All. 423=24 A.L.J. 478.

(17) 18 Bom. 207.

(18) 45 Bom. 567=59 I.C. 777=22 Bom.L.R. 1450: also see *Sundaribai* v. *Collector of Belgaum,* 43 Bom. 376, (P.C.).

282. (c) Calcutta.—In *Mohendrasunder* v. *Dinobandhu*[19] it was held that the plaintiff was not bound to value the relief by way of injunction at the market-value of the property, as in a suit for possession, and that the valuie for purposes of Court-fee fixed by the plaintiff which is proper was to be considered as the value of the suit for purposes of jurisdiction, under S. 8 of the Suits Valuation Act. Similarly in *Rajabala Dasi* v. *Radhika Charan Roy*,[20] it was held that plaintiff cannot put one value for purposes of jurisdiction and another for purposes of payment of Court-fee, under S. 8 of the Suits Valuation Act. In *Manik Chandra* v. *Dambharudhar*,[21] the suit was for a declaration of right to office of Bara Thakur, and permanent injunction restraining defendants from interfering with this right, but according to plaintiff's own allegations he was dispossessed of half of the debutter properties, consequently, the value, for Court-fee and jurisdiction was taken at such portion of the properties from which plaintiff was dispossessed. In *Girish Chandra* v. *Secretary of State*,[22] it was held that the value of an injunction to the plaintiff is really the value at which the injury to him should be assessed.

282. (d) Lahore.—It was held in *Amirchand* v. *Hakim Ali*,[23] by Scott-Smith, J., that in a suit for injunction valued for purposes of Court-fee at Rs. 110, the value for purposes of jurisdiction was to be the same, and that the plaintiff could not, therefore, fix the value for purposes of jurisdiction at Rs. 4,000. Again, in *Dongarsi Das* v. *The Municipal Committee of Fazilka*,[24] it was held that under S. 8 of the Suits Valuation Act, the value of the relief by way of injunction prayed for in the suit, was to be the same for purposes of jurisdiction as that for purposes of Court-fee, *viz.*, at the amount which plaintiff is entitled to put at any figure he chooses.

282. (e) Madras.—The MADRAS HIGH COURT held, in a case falling under S. 7 (iv) (*c*) of the Act, that under S. 8 of the Suits Valuation Act, the value of such a suit for purposes of Court-fee and jurisdiction must be the same; but, where in such a suit the plaint does not state the valuation put by the plaintiff upon the relief sought, and there is no valuation for the purpose of computing *ad valorem* Court-fees, the value for the purposes

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(19) 21 I.C. 771=19 C.L.J. 15.

(20) 79 I.C. 982=1924 Cal. 969=40 C.L.J. 150; citing *Raj Krishnadey* v. *Bepin Beharidey*, 17 I.C. 162=16 C.L.J. 194=17 C.W.N. 591=40 Cal. 245; also see *Umatal Batal* v. *Nanji Koer*, 11 C.W.N. 705=6 C.L.J. 427; (power of Court to revise and increase valuation which is quite arbitrary, and unreasonable).

(21) 1930 Cal. 41=126 I.C. 267: *Cf. Panna Lala* v. *Abdulghani*, 1930 Cal. 473=34 C.W.N. 321=(words of the statute to be strictly applied as held by P.C. in 52 I.C. 897) P.C.

(22) 105 I.C. 80=1928 Cal. 55.

(23) 69 I.C. 577=1924 Lah. 364; cited 111 P.R. 1913 F.B.

(24) 116 I.C. 908=1929 Lah. 566.

of jurisdiction must also be taken to be the value for purposes of Court-fees.[25] Jackson, J., observed as follows:—

"If the plaintiff had entered as his value for jurisdiction Rs. 10,000 and his value for *ad valorem* Court-fee say Rs. 5,000, following the ruling in *Sailendranath Mitra* v. *Ramachandran*, 34 C.L.J. 94, the Court no doubt would take Rs. 5,000 as the value for the purpose of jurisdiction; but if the plaintiff enters as his value for jurisdiction Rs. 10,000 and owing to his misreading of the Court-Fees Act *omits an ad valorem* valuation altogether, considering the two valuations must be the same, the Court is justified in assuming that Rs. 10,000 would also be the *ad valorem* valuation for Court-fees".

282. **(f) Nagpur.**—The Nagpur Court holds that the plaintiff is entitled to value the relief of injunction at any figure he likes:[26] and the Court must accept the value of the relief stated.[27]

283. **IV. (C) VALUATION FOR PRIVY COUNCIL APPEALS.**—In *Hari Mohan Misser* v. *Surendra Narain Singh*,[28] where in a suit for injunction falling under S. 7 (iv) (*d*) of the Court-Fees Act, the plaintiff had put the valuation of relief sought by him, for the purposes of Court-fee at Rs. 1,500, it was held by MacLean, C. J., that notwithstanding that fact, "it was open to the petitioner having regard to the nature of the relief sought, to show what was the real value of the subject-matter in the case." A certificate for leave to appeal to Privy Council was granted, where Rs. 7,000 was said to have been expended on the building structures, and if the plaintiffs were entitled to a perpetual injunction restraining the defendant's indigo business, the loss that the defendants might sustain was far greater than the mere cost of the buildings. In *Basanta Kumar* v. *Secretary of State*[29] it was observed that a valuation made in conformity with stamp law does not prevent a party from obtaining leave to appeal where the real value does not fall short of the appealable amount. In *Ajuas Kooer* v. *Musst. Luteefa*, Markby, J. held that the value of the relief sought for is not necessarily the same as the value of the matter at issue.[30]

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(25) *Annapurnayya* v. *Nagaratnamma*, 92 I.C. 730=1926 Mad. 591; (Citing *Sailendranath* v. *Ramachandran*, 34 C.L.J. 941.

(26) *Amdu* v. *Fazal*, 99 I.C. 868.

(27) *Krishnarao* v. *Chandrabhagabai*, 1924 Nag. 316=79 I.C. 668.

(28) 31 Cal. 301.

(29) 6 I.C. 792=14 C.W.N. 872: Cites *Lekhraj* v. *Kanhya Singh*, 1 I. A. 317=18 W.R. 494; and reconciles it with the decision of the same Board in *Kristo Indro Saba* v. *Huromonee Dassi*, (1 I.A. 84): "In the earlier case, the endeavour was to lower the value of the subject-matter, and this was made by one who had adopted it for the purpose of the previous appeal preferred by him so that the principle that a party cannot appropriate or reprobate governed". "In the latter case, the endeavour was to raise the value, and this was made in circumstances where that principal could not be invoked.

(30) 18 W.R. 21.

S. 7 (4) (e) Suits for Easements.

Synopsis.

284. Scope of the provision.
285. Application of the sub-clause.
286. Suits falling within the sub-clause.

Comments.

284. SCOPE OF THE PROVISION.—This sub-clause provides that in a suit for some right to benefit arising out of land, not provided for elsewhere in the Act, the Court-fee will be paid according to plaintiff's value of the relief sought, *e.g.*, as regards easements. An easement has been defined by S. 4 of Act V of 1882, as a right which the owner, or occupier of certain land possesses as such for the beneficial enjoyment of that land to do and continue to do something or to prevent and continue to prevent something being done in or upon or in respect of certain other land not his own. This sub-clause will cover all cases concerning easements for a right of way, air, light, etc., where they are prayed for as substantial reliefs, and not as additional or ancillary reliefs to some other main relief, by declaration or possession, etc.

285. APPLICATION OF SUB-CLAUSE.—Where the grantee of the lease of a certain mine, unable to obtain possession sued the lessor, and the third party in possession of the mine, for mesne profits, for damages, costs and interest, it was held that the suit was not one merely between the tenant and the landlord to fall within Cl. XI, Sub-Cl. (*e*) of S. 7 of the Court-Fees Act; but, at the same time, the suit could not fall within Cl. (iv), sub-Cl. (*e*) of S. 7 of the Court-Fees Act, which applied to suits for the enforcement of a right of easement; but that it was plainly a suit for possession of land within the meaning of Cl. (v) of S. 7, of the Act, and must be valued according to the value of the subject-matter.[31] A suit for a declaration of rights of way and drainage over a certain *Paramba*, and for a mandatory injunction ordering defendants to remove the fences, walls, etc., that had been built in defiance of the said rights, was not a simple suit for injunction falling under S. 7 (iv) (*d*) of the Court-Fees Act, but a suit for declaration and consequential relief falling under S. 7 (iv) (*c*) of the Act. The Madras proviso could not apply inasmuch as the relief sought was the declaration of a right of easement, which may be said to be a relief with reference to immoveable property; but it referred to no immoveable property that could be possessed as contemplated by S. 7 (v), the subject-matter of the suit being neither land, nor house, nor garden.[32] Jackson, J., observed, that the words "with

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(31) *Sunder Mal* v. *J. C. Murray*, 16 I.C. 963=16 C.L.J. 375.

(32) In re *Venkata Krishna Pather*, 100 I.C. 263=1927 Mad. 348; 25 L.W. 158=52 M.L.J. 121; 38 M.L.T. 18. See and *Cf. Kristodhone Mitter* v. *Nandarani Dasee*, 35 Cal. 889.

reference to,'' mean ''involving the possession of land, houses, or garden,'' under which interpretation the Madras proviso would not apply to easements at all. It is not clear why the specific clause S. 7 (iv) (*e*) was not considered in connection with this suit which was a suit for easements from the very statement of the case, and in which prayer for injunction was added, making both Cls. (*d*) and (*e*) of S. 7, paragraph (iv), applicable.

286. SUITS FALLING WITHIN THIS SUB-CLAUSE.—(1) A suit to have a doorway closed, is a suit relating to easement, which would fall within S. 7, (4) (*e*), of the Act.[33]

(2) But a case of conflicting claims with regard to the waters of a flowing stream, where the plaintiff sued to establish certain rights in a stream, the suits were held to fall under S. 7, (iv) (*e*), ''to obtain a declaratory decree, where consequential relief is prayed.''[34]

(3) A suit by the plaintiff, one of the owners of certain hills for a declaration that he is liable to pay *Achupalisha*, a kind of royalty only at a particular rate, and not at the higher rate claimed by the defendant is one for a declaratory decree without any consequential relief. Such a suit cannot come under S. 7, (iv) (*e*) as a suit for a right to some benefit which will arise out of land, ''for there is no benefit involved in the case arising out of land in favour of the plaintiff. If there is any benefit at all, it is one that goes to the defendant and the clause refers to a suit *for a right to* some benefit.''[35].

S. 7 (4) (f) Suits for Accounts.

Synopsis.

I. Scope of the sub-clause.
287. Meaning of the Expression.
288. Suits falling under this sub-clause.
289. Suits not falling under this sub-clause.
II. Valuation for Court-fee.
290. A: Approximate, or Tentative value.
291 B: Arbitrary valuation by plaintiff.
III. Valuation for jurisdiction.
292 A: Identity of Valuation for Court-fee and jurisdiction.
293. B: Tentative and actual value: jurisdiction to entertain and decree claims distinguished.
294. C: Decree beyond pecuniary jurisdiction.
IV. Valuation of Court-fee in appeals.
295. General observations.
296. The Privy Council decision.
297. The provision in S. 149 Civil Procedure Code.
298. Various Interpretations of P.C. ruling.
299—302. Appeal from a Preliminary decree.
A: By plaintiff, B: by Defendant, C: Where subject-matter of appeal not Co-extensive.
303. Appeal against a Final Decree.
304. Forum of Appeal.
305. Combined or separate appeals.
V. Conclusion.

(33) *Chanda* v. *Taleb*, 2, N.W.P. 41.

(34) 18 W.R. 21.

(35) Per Krishnan, J., in *Karakhattidathil Ryrappan* v. *Kalliyatt Masbathveetll*, 79 I.C. 343=1924 Mad. 621=46 M.L.J. 377=19 L.W. 668.

287. (I) SCOPE OF THE SUB-CLAUSE.—Meaning of the Expression—This sub-clause deals with a special form of suit,[36] the distinguishing feature of which seems to be the accountability of one party to the other.[37] It was held to this effect in *Maroti* v. *Balaji* by the Judicial Commissioner's Court, Nagpur, that this sub-clause deals with a special form of suit, "the distinguishing feature of which seems to be the defendant's possession of, or duty to furnish detailed accounts, the plaintiff being more or less precluded, by reason of the nature of the relations between the parties, from putting the precise pecuniary outcome of those relations before the Court."[38] A distinction is to be borne in mind, between suits for account, on the basis of accountability of one party to the other, and suits on some other basis, in which the sum of money due to plaintiff from defendant, is to be ascertained on the taking of accounts. It has been pointed out in a *Madras* case, *Konduru Runga* v. *Subbiah Setty*,[39] by Boddam, and Sankaran Nair, JJ., that "a suit for an account is a special form of suit. It does not mean every case in which accounts have to be looked into in order to ascertain the correctness or otherwise of the amount claimed by the plaintiff." The Nagpur Judicial Court's Civil Circular No. III-4, Paragraph 11 (*d*) defines suits *for* account as "suits to enforce the rendering of an account, and not for money due *on* an account."[40] Several instances of such suits will be found in Order XX, Rr. 13, 15, and 16, of the 1st Schedule to the Civil Procedure Code, 1908. Similarly, it was observed, in an ALLAHABAD case, by Blair and Banerji, JJ., in *Hans Raj* v. *Ratni*,[41] that "the mere fact that accounts may have to be taken for the purpose of ascertaining the amount due to the plaintiff cannot give the suit the character of a suit for an account." And, the CALCUTTA HIGH COURT, has also held in *Kshetranath Baniya* v. *Kalidas Dasi*,[42] where a long series of decisions to that effect are cited, that "there cannot in essence be a suit for accounts by the plaintiff against the defendant unless the defendant is under a liability to render accounts to the plaintiff."[43] This was recognized in the cases of *Chidrie Kristappa* v.

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(36) *Kunj Behary* v. *Madhub Chandra*, 23 Cal. 884 (889); *Konduru Runga* v. *Subbiah Setty*, 28 Mad. 394.

(37) *Suryanarayana* v. *Raja of Vizianagaram*, 1932 Mad. 565=137 I.C. 871=35 M.L.W. 358.

(38) 14 I.C. 786=8 N.L.R. 36.

(39) 28 Mad. 394.

(40) *Maroti* v. *Balaji*, 14 I.C. 786 (787).

(41) 27 All. 200 (202).

(42) 41 I.C. 929=27 C.L.J 96=21 C.W.N. 784.

(43) See the cases cited in 41 I.C. 929 (931), *Supra Hansraj* v. *Ratin*, 27 All 200=A.W.N. (1904), 227; *Konduru Runga Reddi* v. *Subbiah Setty*, 28 Mad. 394; *Sankara Reddy* v. *Errama Reddi*, 4 I.C. 618=19 M.L.J. 113; *Kailas Chandra* v. *Kiranandra Ghosh*, 10 I.C. 883=24 C.L.J. 187; *Maroti* v. *Balaji*, 14 I.C. 786=8 N.L.R. 36; *Kadar Rowther* v. *Vencatachellapathy Chetty*, 14 I.C. 573; *Indar Mal* v. *Baldeo Das*, 23 I.C. 424=12 A.L.J. 230; and *Malay Pillai Nadan* v. *Venganan Chetty*, 24 Ind. Cas. 764=1 L.W. 180.

Siddamsetti Yamanappa,[44] *Varadarajulu Chettiar* v. *Pattra Narayanswamy Chetty*,[45] and *Krishnaswami Aiyangar* v. *Poovanna Nadar*.[46] In a BOMBAY CASE, *Pochalal Ramchhad* v. *Umedram Kalidas*,[47] the case-law has been fully reviewed by the two conflicting Judgments of Fletcher and Mirza, JJ., and Baker, J., agreeing with Fletcher, J., has said as follows:—

"It appears to me that in every case of a suit for money in which the defendant does not admit the claim there must be some taking of accounts with respect to disputed items, and to hold that such taking of accounts converts the suit into a suit for accounts within the meaning of Cl. (IV) (*f*), S. 7 of the Act would result in converting a large number of ordinary money suits into accounts suits.... In my opinion the essence of a suit for account is that the sum which the plaintiff claims is an unascertained sum, only to be arrived at by the taking of a regular account between the parties." Accordingly, it was held that where a commission agent does not ask for any accounts to be taken, and sues for a definite sum of money to be paid by the defendant the suit is a suit for money; and the fact that the record of the suit transactions in the form of a written account, which is not a settled or stated account, may have to be gone into, does not turn it into a suit for an account."[48] To the same effect is the decision of the MADRAS HIGH COURT, in *Suryanarayana* v. *Raja of Vizianagram*,[49] in which Cornish, J., observes that "the plaint prays for an account and for the payment of such sum as shall be found due to the plaintiff on the taking of an account. But a suit does not necessarily become a suit for accounts because the plaint asks for an account". Where a plaintiff asks merely to establish a right to call for accounts, with or without the prayer for an account as ancillary relief, the suit is one for a declaration, or a declaration with consequential relief, but not a suit for accounts within this clause.[50]

288. SUITS FALLING UNDER THIS SUB-CLAUSE.— The following suits amongst others, have been held to fall under S. 7, (4) (*f*):

(1) A suit for declaration and injunction as a consequential relief, with a prayer in the alternative, if the injunction was not granted, for an order to defendant to keep a correct account of the timber removed.[1]

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(44) 13 I.C. 159=11 M.L.T. 13=(1912) M.W.N. 36.

(45) 20 I.C. 518=24 M.L.J. 693=14 M.L.T. 46=(1913) M.W.N. 879.

(46) 28 I.C. 955.

(47) 52 Bom. 904=30 Bom. L.R. 1284=1928 Bom. 476.

(48) *Pochalal Ramchhad* v. *Umedram Kalidas*, 1928 Bom. 476=52 Bom. 904=30 Bom. L.R. 1284=115 I.C. 391.

(49) 1932 Mad. 565=137 I.C. 871=35 M.L.W. 358.

(50) *Mandhar Ganesh* v. *Ramacharn Das*, 2 Bom. 219; *Rupchand Ghose* v. *Khirodamayi Dassi*, 75 I.C. 567=1929 Cal. 329=27 C.W.N. 457.

(1) *Gulabsingji* v. *Lakmansinghji*, 18 Bom. 100.

(2) A suit by a firm of cloth dealers, against defendants acting as commission agents for purchasing goods for the firm, praying that accounts might be taken of all business done by the defendants on their behalf for a given period, and that whatever was found due, might be decreed with interest.[2]

(3) A suit by plaintiff praying for the removal of the defendant appointed as a trustee under the will of a deceased person, and the appointment of a new trustee, for the formation of a proper scheme to give effect to the intentions of the testator, and for an account.[3] A suit for partition of offerings at a shrine, and for plaintiff's share, also praying for being allowed to inspect the strong room in which the offerings were stored, and for the accounts of the shrine to be taken and explained to the plaintiffs.[4]

(4) A suit for an *account of a joint family business*.[5]

(5) A suit for the taking for PARTNERSHIP ACCOUNTS and for the recovery of profits which would fall to plaintiff's share when the account should be taken.[6]

(6) A suit by minors, through next friend, to compel the defendant to produce and prove in Court the authority under which he had obtained possession of, and was managing the property of the plaintiff's deceased father; and to have accounts taken since his death.[7]

(7) A suit by plaintiff, against the defendant alleging that the latter was the former's AGENT OR MUKHTYAR, and as such entrusted with the management of certain property: further, that the defendant's power of attorney had been revoked, and he refused to render an account of his management.[8]

(8) A suit by the heirs of a deceased, for a declaration that the defendant, as agent of the deceased, was liable to render accounts for the period of his AGENCY, and for an order that the amount found due after examination and adjustment of accounts, might be directed to be paid by him.[9]

(9) A suit for RENDITION OF ACCOUNTS OF AN ALLEGED PARTNERSHIP between the parties and for dissolution of partnership.[10]

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(2) *Khusbalchand Mulchand* v. *Nagindas Motichand*, 12 Bom. 675.

(3) *Govandas Kasandas* v. *Dayabhai Savaichand*, 9 Bom. 22.

(4) *Kaka Ram* v. *Ram Sarn*, 13 P.R. 1901.

(5) *Hardyal* v. *Ramdoo*, 1924 Rang. 354=2 Rang. 408=3 Bur. L.J. 307.

(6) *Arogaya Udayan* v. *Appachi Rowthan*, 25 Mad. 543.

(7) *Bai Amba and Mangli* v. *Jivandas Dullabhram*, 19 Bom. 198.

(8) *Bhagwantrai* v. *Mehta Bajuxas*, 18 Bom. 40; also see *Golap Sundari* v. *Indra Kumar*, 1 I.C. 86=13 C.W.N. 493; 9 C.L.J. 467.

(9) *Gulabkhan* v. *Abdul Wahab Khan*, 31 Cal. 365.

(10) *Manna Lal* v. *Sawandu*, 46 P.R. 1906 and in the *matter of Bhola Nath*, 32 All. 517=6 I.C. 832=7 A.L.J. 546 and *Rikhi Kesh* v. *Mela Ram*, 94 I.C. 650=1926 Lah. 242, *Manji Mal* v. *Panna Lal* 7 P.R. 1915=15 P.L.R. 1916, *Bhogi Lal* v. *Papat Bhai*, 7 Bom. 125; also see *Ahadali* v. *Jamiruddin*, 10 C.L.R. 160.

(10) A SUIT FOR ADMINISTERING THE ESTATE of a deceased person, and giving plaintiff his share,[11] framed as one falling under O. XX, R. 13, Civil Procedure Code,[12] and instituted by a creditor of the estate,[13] or by a beneficiary against the executors of the deceased testator,[14] or against legal representatives of a deceased debtor.[15]

289. SUITS NOT FALLING UNDER THIS SUB-CLAUSE. —(1) SUITS FOR A DEFINITE SUM OF MONEY which the plaintiff alleges to be due to him from the defendant, require an *ad valorem* Court-fee under S. 7 (i), of the Court-Fees Act.[16] It was so held by Fawcett, J., in *Pochalal Ranchhod* v. *Umadram Kalidas*,[17] that "where the plaintiff does not ask for any accounts to be taken, and sues for a definite sum of money to be paid by the defendant is a suit for money; and that the fact that the record of the suit transactions, in the form of a written account, may have to be gone into, does not turn it into a suit for an account." A suit to recover from the defendant certain books and a sum ascertained which the defendant had recovered from certain clients on behalf of the plaintiff, is not a suit for account.[18] Likewise, a suit for the recovery of a specific sum of money does not assume the character of a suit for accounts, merely because in the determination of the question in controversy accounts may have to be examined.[19]

(2) A SUIT FOR PUBLIC CHARITIES under S. 92, falls within the purview of Art. 17, Cl. (vi), Schedule II to the Court-Fees Act: and the mere fact that the plaintiff asks for an account to be taken from the trustees does not take the case out of the purview of that article.[20]

(3) In a SUIT FOR PARTITION OF JOINT FAMILY PROPERTY, the *Karta* or manager is not liable for any account, in the absence of

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(11) *Shujauddin* v. *Mt. Asiabi*, 100 P.R. 1914; *Khadija* v. *Aden Husenally*, 29 I.C. 949=39 Bom. 545.

(12) *Suraiya Qadr* v. *Qudsia Begam*, 24 I.C. 643=1 O.L.J. 281.

(13) *Sashi Bhushan* v. *Chandra Nandy*, 38 I.C. 835=44 Cal. 890=21 C.W.N. 310.

(14) *Surjabala Dasi* v. *Jageshwar Rai*, 41 I.C. 693=45 Cal. 634.

(15) 39 Bom. 545, 55 I.C. 258; 26 I.C. 342.

(16) *Girjabai* v. *Raghunath*, (1905) 30 Bom. 147=7 Bom.L.R. 741 (a suit to recover three specific sums of money, being plaintiff's share of the revenues and profits of three sets of land, alleged to have been wrongly received by the defendant); also see *Vinayak* v. *Krishnarao* (1901) 25 Bom. 625=3 Bom.L.R. 239.

(17) 1928 Bom. 476=52 Bom. 904=115 I.C. 391=30 Bom.L.R. 1284.

(18) (1904) 27 All. 200=(1904) A.W.N. 227.

(19) *Kshetra Nath Bhuniya* v. *Kali dasi dasi*, 41 I.C. 929=27 C.L.J. 96=21 C.W.N. 784, citing 27 All. 200; 4 I.C. 618 (Mad.); 10 I.C. 883 (Cal); 14 I.C. 786 (Nag.); also 23 I.C. 424 (All.); and, 14 I.C. 573, and 24 I.C. 764 (Mad.); See F.-N. (8), *Supra*.

(20) *Girdharila Lal* v. *Ramlal*, 21 All. 200; cited in *Ramrupdas* v. *Sujaramdas*, 7 I.C. 92 (Cal.); also see *Ghazaffar Hussain Uban* v. *Yawar Husain*, 28 All. 112=2 A.L.J. 591=(1905) A.W.N. 208.

fraud, or misappropriation, or other improper conduct with respect to such management; consequently the parties have no right to look back and claim relief against past inequality of enjoyment of the members or other matters.[21] But, subsequent to the date of suit, when a preliminary decree is passed, the parties are only tenants in common, or co-sharers, and the defendant is strictly bound to account for all receipts and expenses.[22]

(4) A SUIT BY A COMMISSION AGENT TO RECOVER MONEY DUE ON TAKING A BALANCE OF ACCOUNTS, is not a suit for accounts, within the meaning of S. 7 (iv) (*f*) of the Act, notwithstanding the fact that it may be necessary to examine the accounts for ascertaining the amount due to plaintiff from the defendent.[23]

(5) A claim by a creditor, in pursuance of the notification of the Court, after the preliminary decree in an administration suit cannot be deemed to be a plaint in a cross suit, and need not be stamped with any Court-fee.[24]

290. II. VALUATION FOR COURT-FEE. A. APPROXIMATE OR TENTATIVE VALUE.—Under the provisions of the Civil Procedure Code, O. 7, R. 2, corresponding to S. 50, of the old Code of 1882, "where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed. But, where the plaintiff sues for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, the plaint shall state *approximately* the amount sued for." The value is given tentatively as the precise amount is to be determined only in the course of the suit, on a rendition of account for which provision is to be found in O. 20, Rr. 12, 16 and 17. This approximate amount, in the case of suits "for an amount which will be found to him on taking unsettled accounts between him and the defendant,"[25] which is a full description of a "suit for accounts,"[26] when stated in the plaint tentatively "must be taken to be the amount or value of the subject-matter of the suit for purposes of jurisdiction."[27] Under S. 7 (iv) (*f*) of the Court-Fees Act, a plaintiff must, in a suit for accounts state the amount at which he values the relief sought,[28] but he generally gives a

(21) *Parmeshwar Dubey* v. *Gobind Dubey*, 33 I.C. 190=43 Cal. 459 =20 C.W.N. 25, relied in 104 I.C. 472=50 Mad. 866=1927 Mad. 801 =53 M.L.J. 189=26 M.L.W. 125=39 M.L.T 234 (*Sri Ranga Tatha Chariar* v. *Srinivasa*); also see, *Jyotibati* v. *Lackmeshwar*, 1930 Pat. 1=8 Pat. 818=10 P.L.T. 491=120 I.C. 770, Citing *Raja Setrucherla Ramabhadra* v. *Virabhadra*, 22 Mad. 470=26 I.A. 167 (P.C.). (Karta is accountable only for the existing state of the property).

(22) *Ibid.*

(23) *Pochalal* v. *Umedram*, 52 Bom. 904=1928 Bom. 476=115 I.C. 391=30 Bom.L.R. 1284.

(24) *Ramaswami* v. *Rangaswami*, 134 I.C. 1137=1931 Mad. 683.

(25) Civil Procedure Code, O. 7, R. 2.

(26) S. 7 (iv) (*f*) Court-Fees Act.

(27) *Khushalchand Mulchand* v. *Nagindas Motichand*, 12 Bom. 675 (677).

(28) *Govandas Kasandas* v. *Dayabhai Savai Chana*, 9 Bom. 22.

rough and ready approximation such as the plaintiffs in any given case are able to give;[29] and he is free to fix the valuation of the relief as he thinks proper, for purposes of Court-fee, subject to the provisions of S. 11, which precludes the execution of the decree in case it exceeds such value until the full fee on the amount decreed has been paid.[30] The amount of Court-fee payable in the suit is to be computed according to the (approximate, or tentative) amount at which the relief sought is valued in the plaint;[31] and by S. 8 of the Suits Valuation Act, the value determinable for the computation of Court-fees and the value for purposes of jurisdiction shall be the same.[32] Therefore, this value for Court-fee determines also the value for jurisdiction, and the plaintiff cannot be prejudiced, or damnified, if he adds to the plaint another value for jurisdiction which it is wholly unnecessary for him to fix.[33]

291. B. ARBITRARY VALUATION BY PLAINTIFF.—In *Chuni Lal* v. *Sheocharanlal*,[34] it was observed by Sulaiman, J., that it must be conceded that in cases coming under S. 7, sub-S. (iv), the valuation made by the plaintiff of the subject-matter in dispute is often an arbitrary one, and particularly in a case falling under sub-S. (iv) (*f*), the valuation is a tentative one, it not being known at the time what would be the exact amount found due to either party after the accounts are taken," and he added, that "it follows that in cases where the valuation has of necessity to be arbitrary and tentative, the person who has to present a petition of plaint (or appeal), and who is called upon to pay the necessary Court-fee will have to fix the valuation, and unless the Court is of opinion that the valuation has been put down fraudulently, it will be difficult not to accept the valuation so made." It should be noted that Mr. Justice Sulaiman, uses the terms *arbitrary* and *tentative* in respect of suits under S. 7 (iv) (*f*) and holds that the Court must accept such valuation unless it has been put down fraudulently. This observation is in view of the provisions of O. 7, R. 11, CIVIL PROCEDURE CODE (corresponding to S. 54, Civil Procedure Code, 1882), which empowers the Court at any time to reject the plaint if it thinks that the suit has been undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so.[35] If the Court comes to the conclu-

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(29) *Bai Hiragauri* v. *Gulabdas Jamnadas*, 22 I.C. 71 (73)=15 Bom. L.R. 1123; also see *Iyyatullah* v. *Chandra Mohan*, Per Mookerji, J., 34 Cal. 954 (F.B.).

(30) *Govandos Kasandas* v. *Dayabhai Savai Chand*, 9 Bom. 22, cited in *Khushalchand* v. *Nagindas*, *Supra*, 12 Bom. 675 (677).

(31) *Bai Hiragavri* v. *Gulabdas Jamnadas*, 22 I.C. 71 (72)=15 Bom. L.R. 1123.

(32) *Ibid*, also see *Iyyatullah* v. *Chandra Mohan*, 34 I.C. 954 (961) F.B., per Mookerjee, J.

(33) *Ibid.*

(34) 89 I.C. 123, F.B.=47 All. 756=1925 All. 787=23 A.L.J. 725.

(35) O. 7, R. 11, Civil Procedure Code, 1908.

sion, that the plaintiff's valuation, in a suit for account, is deliberately fictitious, it can compel the plaintiff, under the provisions of the Civil Procedure Code, to make a fresh valuation, but it cannot fix a valuation itself in place of the plaintiff's valuation.[36] O. 7, R. 11, does not enlarge any taxing section; but is a mere rule of procedure only to ensure the proper application of Court-fees and other Acts.[37] The Act, in sub-s. (iv), in dealing with claims which do not yield themselves readily to any statement of money value, and in leaving the matter to the plaintiff's valuation, subject to Ss. 4 and 9, Suits Valuation Act, proceeds just as much upon a considered policy as it does when by Art. 17, Sch. 2 of the Act it charges certain classes of suits with a fee which is irrespective of value.[38] It is clear from the Court-Fees Act that there is no provision in that Act itself for the revision of the plaintiff's valuation in cases specified in S. 7 (iv), though the provision in the CIVIL PROCEDURE CODE, O. 7, R. 11, is certainly a provision which is intended to apply to cases under sub-S. (iv) of S. 7, and the provision in O. 7, R. 2 applies directly to cases under sub-Cl. (*f*) of Cl. (iv) of S. 7. The amendments in the Court-Fees Act have not kept pace with the amendments in the Civil Procedure Code,[39] and while under the Court-Fees Act, the plaintiff can put any arbitrary value he likes on the relief sought by him, he can only put an approximate, or tentative value on such suits under the provisions of the Civil Procedure Code. The difference, however, is not of "much practical importance as there is a sufficient SAFEGUARD IN S. 11 OF THE ACT whereby, if the actual value of the relief granted to plaintiff exceeds the tentative value fixed by him, the Court has got the power to call upon the plaintiff to make good the deficit and the revenue is thereby protected. Still it is unfortunate that there should be any difference in language between the two enactments in respect of a particular suit."[40] It is this divergence which is responsible to a certain extent for a conflict of views on the question whether a plaintiff in a suit for accounts can fix the valuation of his relief,

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(36) *Ashiq Ali* v. *Imtiaz Begam*, 42 I.C. 891=39 All. 723=15 A.L.J. 794, also see, *Balvant Rao* v. *Bhimashankar*, 13 Bom. 517. (In a suit for account the plaintiff is entitled to value the relief sought approximately, and the Court has no power himself to value the relief sought).

(37) In the matter of *Kalipada Mukharjee*, 1930 Cal. 686=58 Cal. 281=34 C.W.N. 870.

(38) *Phul Kumari* v. *Ghanshyan Misra*, 1918 P.C. 135=52 I.C. 897=46 I.A. 15=43 Bom. 376 (P.C.).

(39) Per Sulaiman, J., in *Chunni Lal* v. *Sheochamlal*, 89 I.C. 123=47 All. 756=1925 All. 787—23 A.L.J. 725 (F.B.).

(40) Satyamurthi's Court-Fees Act, p. 112, also see and *Cf. Manohar Ganesh* v. *Ramcharandas*, 2 Bom. 219=2 Indian Journal 602 (the Court put the *Quaere*, whether the provision in the Court-Fees Act was so inconsistent with the provision in Civil Procedure Code, so as to render that portion of the Civil Procedure Code in operative in suits within S. 7 (iv) of the Court-Fees Act, notwithstanding the concluding passage in that clause, or *Quaere*, whether the concluding passage in Cl. (iv) (S. 7) of Court-Fees Act is too express to admit of the limitation of the power of the Judge, and leaves him the right to revise the valuation placed on suits under Cl. (iv) by the plaintiff.")

for purposes of Court-fee quite arbitrarily, and even unreasonably, and whether the Court has no power to revise plaintiff's valuation, if it is inadequate, or unreasonable, or even perverse. THE MADRAS HIGH COURT has held in *Kandaswami Pillai* v. *Arunachallam Pillai,* that the plaintiff in a suit for account may put an arbitrary valuation; the Court cannot ask the plaintiff to revise the valuation, even if admittedly a larger amount is to fall due, and to direct that the valuation be amended.[41] But Mookerjee, J., held in *Umatal* v. *Mt. Nanji,*[42] that the Court can revise the plaintiff's valuation if it is capricious, and arbitrary, but in recent cases, *Official Trustee Bengal* v. *Gobardhan Guchait,*[43] this view has not been taken. As observed by Rankin, C. J., in *In the matter of Kalipadi Mukharjee,*[44] Mookerjee, J., in coming to the conclusion to which he did in *Umatal's* case did not give sufficient weight to the circumstances that the cases dealt with in sub-s. (iv) of S. 7 are cases where no real objection based on valuation will in general be possible. Accordingly, the view has prevailed generally in all the High Courts, that in cases falling under S. 7, Cl. (iv) generally, and in cases of suits for account, particularly, the value of the relief sought rests with the plaintiff, and it has of necessity, in most cases, to be arbitrary, and a tentative one.[45] Even now, some High Courts deny an arbitrary power to plaintiff, *e.g.,* in *Inayat Husain* v. *Bashir Ahmad,* 1932 A.L.J. 416; 1932 A.I.R. 413 (All.); the ALLAHABAD HIGH COURT held that (1) where the valuation of the suit is contested the value must be determined by the Court, and (2) where the valuation can be ascertained correctly, the plaintiff cannot be allowed to put an arbitrary valuation upon his claim, nor can he be allowed to overvalue, or under-value his claim, with a view to choose his forum. The view of the majority of High Courts is as given above, that the valuation rests with plaintiff under the policy of the Act, and this is sufficiently safeguarded by S. 11 of the Act. In a suit for accounts, the plaintiff is entitled to value his relief at any figure

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(41) 1932 Mad. 656=1932 M.W.N. 979=35 L.W. 846.

(42) (1907) 11 C.W.N. 705=6 C.L.J. 427.

(43) (1928) 118 I.C. 357.

(44) 1930 Cal. 686=58 Cal. 281=34 C.W.N. 870.

(45) *Manna Lal* v. *Samandu,* 46 P.R. 1906=94 P.L.R. 1906; *Rikhikesh* v. *Mela Ram,* 1926 Lah. 242 (1)=94 I.C. 650; *Sasi Bhusan Bose* v. *Maharaja,* 38 I.C. 835=24 C.L.J. 448=21 C.W.N. 310=44 Cal. 890; *Muhammad Abdul Majid* v. *Ala Bux,* 47 *All.* 534=86 I.C. 1055=1925 All. 376=23 A.L.J. 216; *Hiragavri* v. *Gulabdas Jamnadas,* 22 I.C. 71=11 Bom.L.R. 1123; *Khatija* v. *Adam Husenally,* 29 I.C. 949=39 Bom. 545; *Olpharts* v. *Arjundas,* 20 I.C. 928=9 N.L.R. 112; *Surajbala Dasi* v. *Jageshwar,* 41 I.C. 693=45 Cal. 634; *Beni Madhab Sarkar* v. *Gobinda Chandra,* 46 I.C. 165=22 C.W.N. 669; *Sin Paw* v. *Ma Yin,* 55 I.C. 258=12 Bur.L.T. 207; *Arogya Udayan* v. *Appachi Rowthan,* 25 Mad. 543; *Hardyal* v. *Ram Das,* 2 Rang. 408=1924 Rang. 354=86 I.C. 568=3 Bur. L.J. 207.

he chooses, and the stamp will have to be made up subsequently if relief of greater value be granted to him.[46] In a suit for rendition of accounts, the option or discretion of the plaintiff in fixing his valution is not confined to those cases where the value of the relief cannot be ascertained at the time the plaint is presented.[47]

292. III. VALUATION FOR JURISDICTION—(A) Identity of Valuation for Court-fee and Jurisdiction.—A suit for accounts, falling under S. 7 (4) (*f*), is not excluded by S. 8 of the Suits Valuation Act from the application of the rule that the valuation for Court-fees and jurisdiction should be the same. "It is necessary to point out that under S. 8 of the Suits Valuation Act of 1887, the value of a suit as determinable for the computation of Court-fees and the value for purposes of jurisdiction are identical, except in certain specified cases, namely, except in cases of suits for land, suits to enforce rights of pre-emption, suits relating to mortgages and suits relating to specific performances of awards.[48]" It follows that the practice of giving two values cannot be supported with reference to statutory law, or the authorities. However, in a BOMBAY CASE, *Khatiya* v. *Adam Husenally*,[49] where the plaintiff, a Muhammadan female, prayed that accounts may be taken of the properties and business of a deceased person and his firm, and their claims and liabilities may be ascertained, and an order may be passed for its administration by the Court, and the claims under personal law and according to customs of the Borah Community may be ascertained, and plaintiff had prayed for the separation of her share, and the appointment of a receiver etc., she was allowed to value the suit at Rs. 130 for purposes of Court-fee, saying that "although it is not possible to fix the exact value of the property of the firm" according to plaintiff's belief it must come to 30 lacs and for purposes of jurisdiction the claim was, therefore, valued at Rs. 30 lacs, the High Court held, that in view of the provisions of S. 11 of the Court-Fees Act, the plaintiff will not be able to obtain execution of any decree that may be passed in her favour, until the difference between Rs. 130 and the fee which would have been payable had the suit comprised the whole of the amount decreed has been paid to the proper officer. "That being so, there does not appear to be any reason why this should not be treated as a suit for account, and for the share which may be found due to the plaintiff upon taking of such account, and if it is a suit for an account falling under S. 7, Cl. (iv) (*f*), of the Court-Fees Act, the plaintiff is at liberty to value it at Rs. 130

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(46) *Riklu Kesh* v. *Mela Ram*, 94 I.C. 650=1926 Lah. 242(1).

(47) *Ibid*, referring to 46 P.R. 1906.

(48) *Iatullah* v. *Chandra Mohan*, 34 Cal. 954 (F.B.).

(49) *Bhagwantrai* v. *Mehta Bajurao*, 18 Bom. 40; *Bai Amba* v. *Jivandas Dullabhram*, 19 Bom. 198; *Arogya Udayan* v. *Appachi Rowthan*, 25 Mad. 543; *Hardyal* v. *Ramdoo*, 2 Rang. 408=1924 Rang. 354=86 I.C. 568=2 Bur. L.J. 307, *etc.*

or any other sum she pleases''. The High Court set aside the decision of the trial Court rejecting the plaint, and directed the case to be taken on the file, with liberty to plaintiff to proceed with the suit. This was a peculiar case, which fell under the provisions of S. 7 (4) (*c*); and was treated as a suit for account, but its value for Court-fees, if accepted as correct, was hardly a justification for valuing it for jurisdictional purposes at 30 lakhs. The peculiarity about this case is, that two arbitrary values, one the lowest for purposes of Court-fees, and the other the highest for purposes of jurisdiction, were considered correct in view of the particular circumstances of the case. But, the legal position cannot be accepted as sound that plaintiff is free to put two arbitrary values in suits of this description. As observed by the ALLAHABAD HIGH COURT, in *Kandhaiya Ojha* v. *Jagrani Kuer*,[50] the plaintiffs in suits under S. 7, (4), are not entitled to put a high valuation on the plaint for purposes of jurisdiction and thus obtain an adjudication on the matter from a Court of Superior Grade while at the same time asking for a different and much lower valuation for the purposes of Court-fee. To the same effect is the observation in *Manni Lal* v. *Thakur Radhey Gopalji*,[1] that the plaintiff in a suit under S. 7, Cl. (*c*), cannot at one and the same time obtain the services of the highest tribunal for the determination of his claim, and evade the payment of *ad valorem* Court-fee. To avoid this anomaly, the Punjab Chief Court held in *Harichand* v. *Jivanmal*,[2] where plaintiff claimed settlement of accounts and recovery of his share of the joint family property, valuing such share at 50,000, but he valued the relief sought, for purposes of Court-fee at Rs. 5,250, ''that it was not permissible for the plaintiff to value the relief sought for purposes of Court-fee at an arbitrary value inconsistent with his own valuation in the plaint of the property claimed.'' This decision errs in holding that the plaintiff cannot put an arbitrary value in suits under S. 7, (4), read with S. 8 of the Suits Valuation Act: and, the sounder view now prevailing in LAHORE HIGH COURT is, that the plaintiff can put any value he likes on the relief sought, and that the value for purposes of Court-fee is to be taken first, and that for jurisdiction shall follow, and the two valuation must be the same.[3] This is also the view of the Bombay and Rangoon High Court now that the plaintiff who puts a lower value for Court-fee cannot put a higher valuation for jurisdiction, which may be ignored as unnecessary.[4]

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(50) 79 I.C. 358=46 All. 419.

(1) 87 I.C. 190=47 All. 501=1925 All. 602.

(2) 28 P.R. 1903.

(3) 111 P.R. 1913=22 I.C. 503 (F.B.) 69 I.C. 577=1924 Lah. 364; also see 116 I.C. 908=1929 Lah. 566.

(4) 45 Bom. 567=59 I.C. 777 also see 43 Bom. 476 P.C., also see Hardyal v. Ramdoo, 2 Rang. 408=87 J.C. 568=1924 Rang. 354=3 Bur. L.J. 307 (In a suit for account it is open to the plaintiff to value his suit

293. B: TENTATIVE AND ACTUAL VALUE—Jurisdiction to entertain, and decree claim distinguished.—A distinction has been made between the tentative and actual value of a suit, upon which depends the jurisdiction of a Court to entertain the suit, and to decree the claim. In *Manna Lal* v. *Samandu*,[5] the Punjab Chief Court, (Johnstone, and Rattigan, JJ.), held in a suit for rendition of accounts of a partnership that "where the actual amount due to the plaintiff is at the inception of the proceedings unknown to the latter, and can be ascertained definitely only after enquiry," the arbitrary value allowed by law to be placed on the suit is merely tentative, and if the "actual value is found to exceed the pecuniary limits of the Court's jurisdiction, the Court is not competent to pass a decree in the case," for the said amount, but should return the plaint for presentation to a Court having jurisdiction. The question was left open whether both the plaintiff and the defendant can agree to a decree within the Court's pecuniary limits being passed. This was relied in *Rikhi Kesh* v. *Mela Ram*,[6] for holding that the option or discretion of the plaintiff in fixing his valuation is not confined to those cases where the value of the relief cannot be ascertained at the time the plaint is presented, "though possibly combined with other circumstances the fact that such relief can be ascertained might be a reason for holding that the suit for accounts does not lie."[7] The RANGOON HIGH COURT has taken the same view, in *Hardyal* v. *Ramdoo*.[8] It was held that "in a suit for an account it is open to the plaintiff to value his suit for purposes of Court-fee at any figure he chooses, and, having done so, the value for purposes of jurisdiction is automatically fixed by reason of the provisions of S. 8 of the Suits Valuation Act. The value fixed by the plaintiff was approximate and tentative only. It gives the sub-divisional Court jurisdiction to take up the case, but it does not give the sub-divisional Court the jurisdiction to pass a decree for more than Rs. 5,000; if, after enquiry, it is found that the tentative value is not correct, and that the real value of the subject-matter of the suit is over Rs. 5,000, the proper course would be, in our opinion, for the sub-divisional Court to return the plaint for presentation to the proper Court." In this connection, the observations of Mookerjee, J., in *Ijjatullah* v. *Chandra Mohan Banerjee*,[9] may be usefully noticed. The learned Judge, points out that the valuation of a suit as made by the plaintiff may be either definite or approximate. "In the second class of cases in which the valuation put by the plaintiff on the relief claimed by him is indefinite, approximate, or tentative, the value put upon the relief claimed is admittedly not final." The

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for purposes of Court-fee at any figure he chooses, and having done so, the value for purposes of jurisdiction is automatically fixed by reason of the provisions of S. 8, of the Suits Valuation Act).

(5) 46 P.R. 1906=94 P.L.R. 1906.

(6) 94 I.C. 650=1926 Lah. 242.

(7) *Ibid.* per Harrison, J.

(8) 2 Rang. 408=1924 Rang. 354=86 I.C. 568=2 Bur. L.J. 307.

(9) 34 Cal. 954 F.B. at p. 962, per Mookerjee, J.

Court makes an investigation and determines the amount which the plaintiff is entitled to recover.''...''When a plaintiff upon such adjudication accepts the amount determined by the Court, the value of the relief obtained by him which is in substance also the relief claimed by him, is the value finally determined'' (for determining the jurisdiction of Court, and forum of appeal).

294. **(C) DECREE BEYOND PECUNIARY JURISDICTION**.—Where this final real value is within the LIMITS OF COURT'S PECUNIARY JURISDICTION, no difficulty arises, the Court allows the plaintiff the larger amount than what is tentatively claimed, and the plaintiff pays the additional Court-fee payable under S. 11 of the Court-Fees Act, and ''adopts the increased amount as the value of his claim:'' otherwise, if a less amount is allowed, plaintiff's original value put tentatively stands as the value of the relief sought by him.[10] But the difficulty arises as to valuation of relief sought when the amount ascertained in the course of suit, on rendition of account is in excess of the pecuniary limits of Court's Jurisdiction. The NAGPUR JUDICIAL COMMISSIONER'S COURT, has held in *Olpherts* v. *Arjundas*, that the value of a suit for accounts, both for purposes of original trial and appeal, is its value as originally tentatively stated in the plaint by the plaintiff, and the Court, trying such suit, does not lose its jurisdiction merely because the amount found due after inquiry happens to exceed the limit of the jurisdiction of the Court.[11] The view of LAHORE, AND RANGOON High Courts already noticed is that the trial Court should return the plaint for presentation to a Court of competent jurisdiction, as it could entertain the suit at its initial stages on plaintiff's statement of arbitrary and tentative value, but it cannot pass a decree for the proper amount. The MADRAS HIGH COURT, however, has held in *Arogya* v. *Appachi*,[12] that the plaintiff could not be permitted to revise the valuation of the suit, by an application for leave to amend the plaint, and that the trial Court ought to have tried the case. In this way the decree could not be passed in plaintiff's favour for any amount in excess of the Court's limit of pecuniary jurisdiction. A similar view was taken by the CALCUTTA HIGH COURT, in *Bhupendra Kuar* v. *Purna Chander*,[13]

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(10) Per Mukerji, J., in 34 Cal. 954.

(11) *Olpherts* v. *Arjundas*, 20 I.C. 928; citing *Madhodas* v. *Ramji Patak*, 16 All. 286=A.W.N (1894) 84; also see and *Cf. Ijjatvllah* v. *Chandra Mohan*, 34 Cal. 954=6 C.L.J. 255=11 C.W.N. 1133 (F.B.), *Bhupendrakumar* v. *Purna Chandra*, 8 P.C. 34=15 C.W.N. 506=13 C.L.J. 132; (Court can only give decree within limits of its pecuniary jurisdiction), and see *Ibrahimji* v. *Bejanji*, 20 Bom. 265 (view as to *forum* of appeal similar to that of Calcutta High Court), *Cf. Manna Lall* v. *Samandu*, 46 P.R. 1906=94 P.L.R. 1906 and *Hardyal* v. *Ramdoo*, 2 Rang. 408=1924 Rang. 354=86 I.C. 568=2 Bur.L.J. 307 (Court should return plaint for presentation to Court of competent jurisdiction). Refer *Kaloo Ram* v. *Ramkissen*, 8 C.P.L.R. 86.

(12) 25 Mad. 543 (Held that when the original valuation was within the Court's pecuminary limits, a decree in excess of jurisdiction could be passed, provided the extra Court-fee were paid).

(13) 8 I.C. 34=43 Cal. 650—13 C.L.J. 132=15 C.W.N. 506.

that a plaintiff instituting a suit in a Court of limited pecuniary jurisdiction, may be rightly deemed to have limited his claim to the maximum amount for which that Court can entertain a suit. An earlier Calcutta case in *Golap Sundari* v. *Indra Cowmar Hazra*,[14] had held likewise, that in such a case the plaintiff may justly be required to remit the claim in excess of the jurisdiction of the Court, because he has, with his eyes open, brought his suit deliberately in a Court of limited pecuniary jurisdiction. The proposition was thus put in *Golap Sundaris'* case. "When a plaintiff values his suit at an approximate amount and institutes it in a Court of limited pecuniary jurisdiction, he must be presumed to seek a decree for a sum which in no event will exceed the highest amount which limits the jurisdiction of the Court."[15] This view is repeated in *Sarada Sundari* v. *Akramunnessa Khatun*,[16] where the Court observed "that a suit should be instituted in a Court of the lowest grade competent to try it (S. 15, Civil Procedure Code). Competency means jurisdiction, and the competency of a Court depends upon the nature of the suit, and upon its own pecuniary jurisdiction. That jurisdiction must be determined with reference to the various Acts constituting the Courts and the question of valuation by reference to the Court-fees and Suits Valuation Act." For example, where the suit has been instituted in the Court of a Munsiff whose jurisdiction is limited to the trial of suits the value of which does not exceed Rs. 1,000 "*prima facie* it is the plaintiff's claim which determines jurisdiction and the jurisdiction continues whatever the event unless a different principle comes into operation to prevent such a result or to make the proceedings from the first abortive."[17] This view was agreed to in *Hardyal* v. *Ramdoo*,[18] by the RANGOON HIGH COURT, and a similar view was taken by the BOMBAY HIGH COURT in *Hirjibhai* v. *Jameshedji*.[19] In a RECENT BOMBAY CASE, it has been held that in a suit for accounts the valuation for the purpose of jurisdiction shall be the same as the value for purposes of Court-fee fixed by the plaintiff, and this jurisdiction of the trial Court is not ousted if on enquiry an amount exceeding the pecuniary jurisdiction of the Court is found due.[20] Thus, THREE DIFFERENT VIEWS have been held by different High Courts: (1) that the Court where the suit is first instituted, on a valuation for Court-fee fixed by the plaintiff, continues to have jurisdiction in the case up to the final decrees, and is entitled to pass a decree in excess of Court's pecuniary limits of jurisdiction: (2) that the Court has no such power to decree claim beyond its limits of jurisdiction, but can decree up

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(14) 14 I.C. 86 (90)=13 C.W.N. 493=9 C.L.J. 367.

(15) *Ibid.*

(16) 78 I.C. 747=61 Cal. 737—1924 Cal. 783=28 C.W.N. 710.

(17) *Ibid.* 78 I.C. 747=61 Cal. 737=1924 Cal. 783.

(18) 2 Rang. 408=1924 Rang. 354=86 I.C. 568 (For 8).

(19) 21 I.C. 783=15 B.L.R. 1021.

(20) *Ishwarappa Mauri* v. *Dhanji Gujjar*, 56 Bom. 23=1932 Bom. 111 =34 Bom.L.R. 44.

to the maximum amount within its pecuniary jurisdiction, and (3) that it should return plaint for presentation to a Court of competent jurisdiction.

295. **IV. VALUATION OF COURT-FEE IN APPEALS-GENERAL OBSERVATIONS.**—The penultimate paragraph in this sub-clause refers to "a *plaint, or a memorandum of appeal*:" on which Court-fee shall be paid "according to the amount at which the relief sought is valued" but it does not expressly say, valued by whom; by plaintiff, by appellant, or by Court, in the course of the suit. The paragraph concludes, "in all such *suits.*" "The *plaintiff* shall state the amount at which the relief sought" is valued. The word *suits*, is distinguishable from *plaint*, and *memorandum of appeal.* Does it cover plaints, or both plaints, and memoranda of appeal in a suit. Again, the word *plaintiff* has to be noticed, without reference to *appellant*. Does this word cover the appellant in appeal, as if he were a plaintiff in the suit. All these questions and others of a like nature have been necessitated by the DEFECTIVE PHRASEOLOGY OF THE SECTION, and while some High Courts have taken the wording quite literally, others have sought to put some reasonable construction upon them to avoid the anomalous results, otherwise likely to ensue. It has also been observed that the amendments in the Court-Fees Act have not kept pace with the changes in the law of Civil Procedure. In suits for accounts, the appeal may be from a preliminary decree, or from a final decree. The tentative value, which the plaintiff is allowed to put at the start, may be changed to real or ascertained value, in the subsequent stages of the suit, and especially so by the final decree, determining how much is due to the plaintiff on rendition of accounts, and this may be more or less than the amount originally stated by the plaintiff, as the value of the relief sought by him. If the amount decreed is less than the amount claimed, the plaintiff may adhere to his original amount claimed, or claim a very much higher amount in appeal as the result of accounts ascertained in the course of proceedings. If the amount decreed in favour of the plaintiff, is in excess of the amount claimed by him, the appeal may have to be filed by the plaintiff, or by the defendant, and it is readily conceivable that the value of relief in appeal and in the suit may not be co-extensive. An appeal from a preliminary decree filed by the plaintiff whose claim is non-suited, differs from a similar appeal by the plaintiff suggesting a modification in the form of decree. Where the subject-matter in the appeal is co-extensive with that in the suit, and the defendant appeals, it is a question whether, the defendant as appellant, is to be considered a plaintiff for purposes of the appeal, and allowed to value the relief sought in appeal by him; or, whether he is bound to accept the plaintiff's original, or modified valuation, however exaggerated, arbitrary or fanciful it may be. The question of Court fee in appeal may be further complicated where the defendant is appealing against the whole or part of a preliminary decree; or is questioning the final decree in its entirety, or only as regards a portion. An appellant, whether plaintiff, or defendant has to

give a correct valuation of the reliefs sought in appeal, but the question is hedged round with numerous difficulties, accentuated by a remarkable CONFLICT OF VIEWS between the different High Courts. In a state of this mass of authority, often not easy to reconcile, the task of the commentator is to guide the reader to deduce basic principles which seem well established by the preponderating authority of different High Courts, and to set forth some working rules with more or less precision. Considerable light has been thrown on the subject by some recent pronouncements of their Lordships of the Privy Council, and of several High Courts which have had to interpret the authoritative decision of the Privy Council in case of *Faizullah Khan* v. *Mouladad Khair*, on appeal from a decision of the Judicial Commissioner, N.-W.F. Province.

296. THE PRIVY COUNCIL DECISION.—The ruling of their Lordships of the Privy Council in *Faizullah Khan* v. *Mauladad*,[21] has been discussed at length in paragraph 96, of the Comments, in connection with the broad question of valuation in appeal under all the sub-clauses of S. 7 (iv), of the Court-Fees Act. The facts are stated in paragraph 96, *ante*, and it will be briefly noticed here, therefore, that the Privy Council have held "that a memorandum of appeal, should state in terms of the Act, the amount at which relief is sought. This determines appeals". The *appellant*, therefore, is allowed to value the relief sought by him in appeal. In this case, the appellant was the plaintiff himself. In cross-claims arising out of partnership disputes, for rendition of the accounts the plaintiff's suit tentatively valued at Rs. 3,000 was dismissed, and defendant's cross claim was decreed to the extent of Rs. 19,900. The plaintiff appellant, had put only this value on his appeal, in which he was praying for a decree for amount found due to him on rendition of accounts, and also claiming the dismissal of final decree in favour of the defendant. Their Lordships held that "in suits for accounts it is impossible to say at the outset what exact amount the plaintiff will recover. The Legislature, therefore, leaves it open to him to *estimate* the amount. That is the *scheme of the Act.*" (The italics are mine). This is basic principle, number one, to be noticed.

297. THE PROVISION IN S. 149, CIVIL PROCEDURE CODE.—It would be noticed, that the decision in *Faizullah Khan* v. *Mauladad*,[22] besides resting itself upon the basic principle of the SCHEME OF THE COURT-FEES ACT, draws pointed attention to the PROVISION IN CIVIL PROCEDURE CODE, S. 149, which empowers the Courts to make up deficiency of Court-fee. "Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to Court-fees has not been paid, the Court may, in its discretion, at any stage allow the person, by whom such fee is payable, to pay

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(21) 1929 P.C. 147=56 I.A. 232=117 I.C. 493=10 Lah. 737 P.C. =56 M.L.J. 281.

(22) 1929 P.C. 147=56 I.A. 232=56 M.L.J. 281, etc.

the whole or part, as the case may be, of such Court-fee and upon such payment the document, in respect of which such fee is payable shall have the same force and effect as if such fee had been paid in the first instance.'' A technical objection as to deficiency of Court-fee, which, it must be conceded, was raised before the Judicial Commissioner, not in the interests of the crown, but of the party, however sound on a consideration of some other basic principles, could not find much favour with their Lordships of the Privy Council in view of the provisions of S. 149, Civil Procedure Code.

298. **VARIOUS INTERPRETATIONS OF PRIVY COUNCIL RULING.**—**(a)** The SIND JUDICIAL COMMISSIONER'S COURT, was dealing in *Shivandas Motumal* v. *Hairram*,[23] with a case, where plaintiff suit was dismissed, and the defendants cross-claim had been decreed against him. The Court observes that ''it is no doubt true that in the present case it is the plaintiff who is appealing. But he is practically seeking two reliefs. In the first place, he wants to get rid of the decree which has been passed against him. In the second place he wants a decree for an additional amount to be passed in his favour. So far as the amount decreed against him goes he must pay Court-fee thereon, and so far as the additional amount which he claims it is open to him to say that he is not able to ascertain that amount, and may put his valuation at a nominal figure''. The Privy Council ruling is noticed, and it was observed that there the plaintiff had as a matter of fact paid Court-fee on a sum of Rs. 19,900, that was the amount decreed against him. ''In that case there was, therefore, no question of any arbitrary or improper value having been put on the claim in appeal.'' [Their Lordships had held that the valuation was not only on the amount of the decree passed against the appellants but ''it covered the appeal as a whole,'' and could not be treated as an under-value on a split Value.]

(b) The RANGOON HIGH COURT in *C. K. Ummar* v. *Ali Ummar*,[24] quotes the Privy Council ruling as an authority for the proposition that where in a suit coming under S. 7, Cl. (iv) (*f*), of the Act, the plaintiff having obtained a preliminary decree for accounts, the defendant appeals against the whole decree, the defendant is not bound by the valuation of the plaint in the trial Court, and is at liberty to make a fresh valuation for the purpose of the appeal. The defendant had appealed in this case against the preliminary decree, after a revised and enlarged value had been put on the relief sought by plaintiff at Rs. 30,000 in place of the original estimated value of Rs. 15,000 and the appeal against the whole decree denied the alleged partnership, saying that the suit was barred by limitation, and yet the defendant was allowed to put Rs. 3,000 as the arbitrary value for the relief sought in appeal. It has not been noticed in this Judg-

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(23) 1933 Sindh 322.
(24) 9 Rang. 165=1931 Rang. 146 (F.B.)

ment, that the Privy Council case was easily distinguishable, being given in the case of the plaintiff-appellant asking for a relief in appeal, and expecting a decree in his favour, which their Lordships thought might be for an amount well within the amount covered by the stamp. This estimate was neither arbitrary nor improper as noticed by the Sind Court, and certainly their Lordships were not expressing themselves on the conflict between the Madras Full Bench and the Allahabad cases, bearing on the point before the Rangoon High Court.

(c) The MADRAS HIGH COURT has followed the Privy Council Ruling in *Nukala Venkatanandam*,[25] and has interpreted it to mean that "the appellant, whether plaintiff or defendant, can give some valuation and one cannot complain that the amount in the Memorandum is not the proper amount". No doubt, their Lordships observe that "in suits for account it is impossible to say at the outset what exact amount the plaintiff will recover", and they applied this principle to appeals also, in the sense, that the plaintiff-appellant was considered justified in putting the value of Rs. 19,000 which their Lordships held to cover the appeal as a whole, remarking that it was a mistake to consider that the Court-fee had been put on the amount of the decree against the appellant. But the Madras High Court takes this authority to mean that "an appellant, whether defendant or appellant, is in the position of a plaintiff in appeal at least in suits for taking accounts of a partnership and in partition-suits." The ruling of their Lordships concerned a plaintiff-appellant, and there are no expressions in the judgment to show that their Lordships' attention was being invited to the broader proposition deduced by the recent Madras decision from their Lordships' pronouncement. "The scheme of the Act" is mentioned under which plaintiff, or appellant (plaintiff-appellant in that case) was to put some estimate on the relief sought by him in appeal. But there is nothing in the judgment which may be understood to affect the force of the Madras Full Bench, in *Dhupati* v. *Perindevamma*,[26] for instance, where it was held that in a suit coming under S. 7, Cl. (iv) (*f*) of the Act, the plaintiff having valued the relief prayed at a certain figure, and a preliminary decree having been passed, the *defendant*-appellant, appealing against the whole decree is bound by the valuation in the plaint, and cannot make a fresh valuation for the purposes of the appeal.

299. APPEAL FROM A PRELIMINARY DECREE—A: Appeal by Plaintiff.—An appeal from a preliminary decree filed by the plaintiff, whose claim is non-suited, is to be valued for purposes of jurisdiction, and Court-fee, at the value of the relief costated by the plaintiff. The subject-matter in appeal is co-extensive with that in the suit. The SINDH JUDICIAL COMMISSIONER'S COURT, in *Mahomed Rahmoo Mowji* v. *Ibrahim Gangji*,[27]

(25) 1933 Mad. 330=141 I.C. 602=64 M.L.J. 122=37 M.L.W. 106.
(26) 33 I.C. 602=33 M.L.J. 402=39 Mad. 725 F.B.
(27) 98 I.C. 909=1927 Sindh 100=21 S.L.R. 377.

held that "the last part of the Cl. (iv) (*f*), makes it obligatory on the plaintiff to value his relief and such value not only determines the Court-fees but also the jurisdiction of both the original and the appellate Court." Further, that it is not open to the plaintiff who has been non-suited to contend that he should be allowed to put a different value on the same subject-matter when he is appealing from his non-suit. It says as follows:—

"It cannot also be contended with any show of reason that the Legislature ever intended to permit a defeated party, whether he be the plaintiff, or the defendant, to value the same relief differently for the purpose of his appeal all other things being equal." The Madras High Court, observed in *Samiya Mavali* v. *Minammal*,[28] that "the reference to appeal in the last paragraph but one of the sub-section may well apply to the case in which the subject of the appeal is not co-extensive with the subject-matter of the suit, in which case it would be unjust that the party appealing should be bound by the original valuation." This decision has been consistently acted on,[29] and the Full Bench decision in *Ohupati* v. *Perindev*,[30] fully agrees with it. The Privy Council case cannot be said to negative this view.[31]

300. **(2) B: By defendants.**—THE MADRAS FULL BENCH DECISION,[30] concerned a case in which after a preliminary decree had been passed in a suit for account, the defendant appealed against the preliminary decree. It was held that the defendant-appellant was bound by the valuation in the plaint. This is a leading case on the point, and several High Courts are to be found sharing this view fully. In *Kunji Mal* v. *Pannalal*,[32] (a PUNJAB CASE) it was held that the defendant-appellant in an appeal against a preliminary decree was bound to pay an *ad valorem* fee on the value put by plaintiff on his suit in his plaint, and that the stamp of Rs. 10 on which the appeal had been filed was insufficient, as the value of such a suit could be "estimated" and Art. 17, Sch. II did not apply. Similarly, the SINDH JUDICIAL COMMISSIONER'S COURT, has held in *Motiomal* v. *Molapbai*,[33] following the Punjab Chief Court, and the Madras Full Bench case, that "where the plaintiff has valued the relief prayed under Cl. 4, S. 7 of the Court-Fees Act, and has obtained the decree, and the defendant appeals *against the whole decree*, he is bound by the valuation in the plaint. In this case the defendant had admitted the partnership, but if successful the Court would have had to

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(28) 23 Mad. 490 (492).

(29) *Sec* 1 I.C. 670 (Cal.); 7 P.R. 1915 (P.C.); and 79 I.C. 923 (Sind).

(30) 33 I.C. 602=39 Mad. 725 (F.B.).

(31) 1929 P.C. 147=117 I.C. 493 etc., held "that the sum awarded on appeal to the plaintiffs would in all likelihood be much within the value stated by them." This was taken to include the appeal in its entirely, and the case was not of under-value or split value.

(32) 7 P.R. 1915=28 I.C. 262=15 P.L.R. 1916.

(33) 79 I.C. 923.

rescind the whole decree as it stood, and so the rule above set forth was applied. In *Pochalal Ranchhod* v. *Umedrian Kalidas*,[34] the BOMBAY HIGH COURT, found the suit in question to be for an ascertained sum of money, which did not fall under S. 7, (iv) (*f*), but Fawcett, A.C.J., said that "even supposing this is a case under Cl. (iv) (*f*), I would hold that the appellants are bound by the plaintiff's valuation". He thought "that a distinction can rightly be made between the two classes of cases", one where the appellants do not deny *in toto* their liability to account, as in the Allahabad, and Patna cases of *Kanhaiyalal* v. *Ram Sarup*,[35] *Kuldip Sahai* v. *Haribar Prasad*,[36] and the other where the defendant's deny *in toto* their liability to account, as in the Madras Full Bench case of *Srinivasacharlu* v. *Perindevamma*,[37] and he followed the Madras case as exactly in point. The PATNA HIGH COURT, held in *Phulartand Coal Coy.*, v. *Burrakar Coal Coy.*,[38] that the defendant appealing against a preliminary decree appointing commission to ascertain amount due to plaintiff, was bound by plaintiff's valuation in the plaint. The defendants in this case denied that any amount was due. The trial Court decided that cesses were due, but left the determination of the amount to further proceedings in the suit. The defendant appealed denying their liability *in toto*, and the High Court held that "where the liability which has been found to exist by the trial Court is denied *in toto*, or where liability is denied for a portion of the claim, which portion has been clearly and definitely valued in the plaint, it is not open to a defendant appealing from the decree to value his appeal otherwise than at the value which the plaintiff, as required by the provisions of S. 7, (iv) (*f*), of the Court-Fees Act, has placed upon his relief." This was so held, following the leading Madras authority in the Full Bench case of *Dhupati Srinivasacharlu* v. *Perindevamma*.[39] The Madras group of cases, thus includes decisions by the Punjab Chief Court, the Sind Judicial Commissioner's Court, the Bombay and Patna High Courts and the Calcutta[40] cases, are also considered to support this view. The LAHORE HIGH COURT *has* followed the Madras Full Bench, and the earlier Punjab case, in *Batna Ram* v. *Rahmatulalh*.[41]

301. (3) THE OPPOSITE VIEW.—The view taken in the above set of rulings, is opposed to that taken by another group of cases. The leading case, is the decision of Pigott, J., in the ALLAHABAD case of *Kanhaiyalal* v. *Ram Sarup*,[42] which has been followed in

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(34) 115 I.C. 391=52 Bom. 904=1928 Bom. 476=30 Bom. L.R. 1284.
(35) 66 I.C. 841=44 All. 542=1922 All. 228=20 A.L.J. 416.
(36) 75 I.C. 871=3 Pat. 146=1924 Pat. 161=4 P.L.T. 638.
(37) 33 I.C. 602=39 Mad. 725=30 M.L.J. 402 (F.B.)
(38) I.C. 795=1930 Pat. 605=11 P.L.T. 629.
(39) 33 I.C. 602=39 Mad. 725=30 M.L.J. 402.
(40) Also see *Banwari Lal* v. *Sheo Shanker*, 1 I.C. 670=13 C.W.N. 815.
(41) 1931 Lah. 143=131 I.C. 337.
(42) 66 I.C. 841=44 All. 542=1922 All. 228=20 A.L.J. 416.

Chunni Lal, v. *Shev Charanlal*,[43] by Sulaiman and Boys, JJ. It was held by the Allahabad High Court, in an earlier case, *In the matter of Bhola Nath*[44] that "the fact that it is now compulsory on the appellants to appeal against the preliminary decree passed in suits for accounts, does not affect the matter of Court-fee in any way." The language of the section applies to appeals from a preliminary, or a final, decree, and *ad valorem* Court-fee is payable on the value of relief sought in appeal. In *Kanhaiyalal's* case, Pigott, J., held that in an appeal from a *preliminary* decree in a suit for account, an appellant has under S. 7 (iv) (*f*) of the Act, the option of placing his own valuation upon the memorandum of appeal, and of paying Court-fee according to that valuation. He does not differ from the view in the Madras Full Bench case, if it were a case of a *final* decree; as regards *preliminary* decrees, taking the words of the section as they stand, the learned Judge, held that the appellant (defendant) is allowed the option of placing his own valuation upon the memorandum of appeal. He notices the difficulty of the word "plaintiff" being used in the last two lines, without reference to appellant, but argues it away, by observing "that this proviso governs the whole of the suits falling under Cls. (*a*), (*b*), (*c*), (*d*) and (*e*) as well as under Cl. (*f*) of the sub-s. (iv) of S. 7 of the Court-Fees Act," and "in some of these cases no question of the passing of a preliminary decree can possibly arise." The PATNA HIGH COURT, in *Kuldip Sabai* v. *Harihar Parsad*,[45] tried to reconcile the Madras Full Bench decision in *Srinivasacharlu* v. *Perindevamma*,[48] by remarking that in the Allahabad case the defendant did not deny his liability, but took exception only to the form of the decree, and the Madras decision was against a preliminary decree for accounts where such liability was denied *in toto*. However, the Patna Court went on to hold, that the defendant was not bound to accept plaintiffs valuation in appeal, in the case where the defendant did not dispute the liability to render accounts, because "his relief in the appeal is not the same as that of the plaintiff in the appeal", and was "such as is not capable of a correct estimate." In the Allahabad case, of "*Chunni Lal* v. *Sheo Charanlal*," Sulaiman, J., notices the confiict of opinion between the various High Courts, and the difficulty of deciding the main question "whether it is open to the defendants to put a valuation different from that fixed by the plaintiffs in their plaint," and observes that it "is really due to the circumstance that the amendment of the Court-Fees Act have not kept pace with the amendments of the Civil Procedure Code." Then he proceeds to construe the words of the sub-clause strictly against the Government, and in favour of the defendant who has to pay Court-fee on appeal, and holds that the last words, "in all such suits the *plaintiff* shall state the amount at which he values the

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(43) 89 I.C. 122=47 All. 756=1925 All. 787=23 A.L.J. 725.
(44) 6 I.C. 832=7 A.L.J. 546.
(45) 75 I.C. 871=3 Pat. 146=1924 Pat. 161=4 P.L.T. 639.
(46) 39 Mad. 725 F.B., 33 I.C. 602=30 M.L.J. 402.

relief sought,'' do not entitle the Court to import into the section words to the following effect, ''and the amount stated by the plaintiff shall be the amount for purposes of memorandum of appeal.'' The omission of the word ''appellant'' from the last two lines, does not justify the inference, according to the learned Judge, that the memorandum of appeal must necessarily have the same valuation as the plaint. He thinks ''it is sufficient to say that the defendant cannot be called upon to pay Court-fees on the amount of valuation given by the plaintiff when the language of the section does not clearly so demand.'' His decision is based on the ground that the words have to be interpreted as they stand and it must be left to the Legislature to cure the defective language of the enactment: He expresses conciousness of the fact that in some cases this interpretation of the section will be unsatisfactory, and illustrates it by pointing out the inconvenience from the absence of uniformity, which is ''likely to be embarassing, but the result is due to the drafting of the section as it stands.'' This leads to the conclusion, ''that in cases where the valuation has of necessity to be arbitrary and tentative, the person who has to present a petition of plaint or appeal, and who is called upon to pay the necessary Court-fee will have to fix the valuation, ''and unless the valuation has been put down fraudulently, it will be accepted by the Court. This judgment is supported by a learned statement, by Boys, J., of the legal position in ''three distinct cases'' which present themselves for consideration. (*a*) Where the defendant appeals against only a part of the preliminary decree; and (1) the plaintiff has not separately valued the two liabilities, (2) the plaintiff has separately valued the two liabilities; and (*b*) where the defendant appeals against the whole decree, and, he holds as to (*a*) that the defendant should be made to pay on the valuation of the liability to which he objects, and should be absolved as to the liability he is prepared to accept, as to (*a*-1), it must be left to the appellant to value the liability against which he appeals: and, as to (*a*-2), and (*b*), there was no reason for any variation in principle. He thus holds, that in all 3 cases, the appellant should be allowed to put his own valuation on the appeal. The RANGOON HIGH COURT, in *C. K. Umar* v. *C. K. Ali Umar*,[47] interprets the Privy Council ruling to hold that the defendant-appellant is not bound by plaintiff's valuation in the suit. It has been pointed out already in II, 299 (*b*) *ante*, that this interpretation, if correct, only makes the confusion worse confounded, and that this Rangoon Full Bench judgment reads too much into the judgment of their Lordships of the Privy Council in *Faizullah Khan* v. *Mouladad*, the ratio-decidendi of which does not touch the real conflict between the Madras Full Bench, and the Allahabad view. The Allahabad view has been followed by the LAHORE HIGH COURT, in *Thakardas* v. *Daulat Ram*[48] where it was held that a defendant appealing against a preliminary decree passed against him in a

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(47) 9 Rang. 165 (168)=133 I.C. 91=1931 Rang. 146 (F.B.).
(48) 91 I.C. 32=1926 Lah. 189=26 P.L.R. 825.

suit for accounts is entitled to put his own valuation on the memorandum of appeal, and pay the Court-fee on that valuation, and is not bound to accept the plaintiff's valuation in his plaint. However, in *Harichand* v. *Madanlal*,[49] Sir Shadilal, C. J., and Abdul Qadir, J., have held that the *forum* of appeal from the preliminary decree depends upon the valuation of the suit for purposes of jurisdiction, which the *plaintiff* has the right to state at the amount of his own valuation of the relief sought. And, in *Batma Ram* v. *Rahmutullah*,[50] Addison, J., has followed the Madras Full Bench view, in holding that the defendant is bound by the plaintiff's valuation of a suit for rendition of accounts, and must pay Court-fee on appeal on the plaintiff's valuation in the plaint. The Patna High Court's decision in *Kuldip Sahay* v. *Harihar Parsad*, has been noticed above. There the subject-matter of appeals was not co-extensive with the suit; but in *Phulartand Coal Company* v. *Burrakar Coal Coy*,[1] the decision is taken that where the trial Court's finding of liability is denied in toto by the defendant, or for a portion definitely valued in the plaint, the memorandum of appeal cannot be valued other than at value placed by plaintiff upon his relief. The Patna case, follows the Madras Full Bench[2] view, and dissents from the Allahabad decision in Kanhaiya Lal's case.[3] The Nagpur Court,[4] observes a divergence of judicial opinion on the question, and prefers to follow the view taken in the Allahabad case of *Chunni Lal* v. *Sheocharanlal*.[5]

302 **APPEAL FROM A PRELIMINARY DECREE WHERE SUBJECT-MATTER OF APPEAL IS DIFFERENT FROM THAT IN THE SUIT**.—In cases of appeals from preliminary decrees, where the subject-matter of the appeal is not co-extensive with that in the suit, the plaintiff, or defendant would not be bound by the original valuation of the suit. In *Ram Singh* v. *Ramchand*,[8] (Sir H. Rattigan, C. J., and Abdul Raoof, J., where the plaintiff had appealed against the preliminary decree disposing of certain issues, and the defendant had filed cross-objections, the Lahore High Court held that the appeal on the question of interest was sufficiently stamped with a Court-fee of Rupees ten, and the question relating to two items of Rs. 7,000 and Rs. 3,000 was incidental to the question of interest. The Madras decision in *Samia Mavali* v. *Minammal*,[7] is the leading case on the subject. It was remarked "that the last paragraph but one of the sub-section may well apply to the case where the

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(49) 128 I.C. 491=1930 Lah. 832=31 P.L.R. 536.
(50) 1931 Lah. 143=131 I.C. 337=32 P.L.R. 62.
(1) 1930 Pat. 605=128 I.C. 795=11 P.L.T. 629.
(2) 39 Mad. 725=33 I.C. 602 (F.B.).
(3) 44 All. 542=1922 All. 228=66 I.C. 841.
(4) *Binji Raj* v. *Kisanlal*, 1933 Nag. 127=141 I.C. 277=16 N.L.J. 10.
(5) 47 All. 756=89 I.C. 122=1925 All. 787.
(6) 1 Lah. 6=57 I.C. 185=19 P.L.R. 1920=6 P.W.R. 1920.
(7) 23 Mad. 490.

subject-matter of appeal is not co-extensive with the subject-matter of the suit, in which case it would be unjust that the party appealing should be bound by the original valuation.'' The view taken by Sulaiman, J., in *Chunni Lal* v. *Sheo Charan*,[8] in distinguishing the Allahabad case of *Kanhaiyalal* v. *Ram Sarup*,[9] and the *Patna* case of *Kuldip Sahai* v. *Harbar Basad*,[10] appears to be that where the defendant is appealing not from the whole decree but admits part liability, he is to be absolved from the liability, from payment of the full court-fee on the amount stated originally by the plaintiff in appeal. Boys, J., also took the same view in that case. He held, that where the defendant appeals against only a part of a preliminary decree, and the plaintiff has not separately valued the two reliefs, or he has separately valued the two reliefs, (or even where he appeals against the whole preliminary decree), the defendant is not bound by the plaintiff's valuation in the original suit. But the Madras High Court, though differing from it in other respects, agrees so far that the defendant appealing against only a part of the decree, not separately valued, can value as he chooses.

303. **APPEAL AGAINST A FINAL DECREE**.—The decision of their Lordships of the Privy Council has been taken to hold that ''where a suit for accounts valued at a definite sum is dismissed, and a decree for a much larger sum is passed in favour of the defendant, the plaintiff-appellant can appeal against the decree in favour of the defendant on a court-fee due thereon, and pray for a decree in his own favour without further Court-fee.'' This proposition stated in this manner is misleading. No doubt the plaintiff's suit, tentatively estimated at Rs. 3,000 was dismissed in the trial Court, and the defendant's cross-claim was decreed by the final decree, for Rs. 19,900, and the claim in appeal, stamped with Rs. 975 court-fee was ''for reversal of the decree against the appellants, and for granting a decree in their favour for such amount as may be found due; but, their Lordships, after referring to the circumstances of that case observed that ''it is plain that any substantial inversion of liability under the respective decrees would result in all likelihood in the sums awarded on appeal to both parties being much within Rs. 19,000 awarded to one.'' Their Lordships accordingly took the valuation of the appeal at Rs. 19,900 as correct, holding that there was ''no reason for treating that payment either as upon an under-value or a split-value'' and remarking that ''it was a mistake,'' on the part of the appellate Court to treat the payment of Rs. 975 as *a fee made only on the amount of the decree passed against the appellants.*'' In the SIND JUDICIAL COMMISSIONERS' COURT,[11] the plaintiff-appellant was taken to be asking for two distinct reliefs, (1) against the final decree passed against him, and (2) for a

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(8) 47 All. 756=89 I.C. 122=1925 All. 787.
(9) 44 All. 542=1922 All. 228=66 I.C. 841.
(10) 75 I.C. 841=3 Pat. 146=1924 Pat. 161.
(11) 1933 Sind 322.

decree in plaintiff's own favour. The former was valued at the exact figure decreed against plaintiff of which he sought the reversal, and he had to put his own tentative value on the relief sought in his own case. The difference between the Sind case, and the N.-W.F.P. case may not be easy to discern, but their Lordships of the Privy Council, must be taken to have held, under the circumstances of the case before them, that the fee paid by the plaintiff-appellant was not to be treated "as a fee made only on the amount of the decree passed against the appellants." They observe, "that amount (Rs. 975 Court-fee) may be not only in full, but largely in excess of the *true* sum of relief at which a *sound* valuation could in the present circumstances be said to reach, and *it covered the appeal as a whole, including that sum on the one hand, and a much smaller figure of Rs.* 3,000 *on the other.*" This judgment, therefore, does not negative the position taken up in the Sindh case, or the underlying principles, that the appellant when he is seeking reversal of a *final* decree passed against him, has to pay Court-fee *ad valorem* on the ascertained amount, rather than on the tentative value of the original claim, though the plaintiff whose suit for account is dismissed, would have to put the same value on his relief in appeal as in the trial Court. It should also be noticed that there is no conflict on this point between the two leading cases of the Madras Full Bench, in *Dhupati Srinivasacharlu* v. *Perindevumma,*[12] and the Allahabad case of *Kanhaiyalal* v. *Ram Sarup.*[13] The Allahabad Court doubted the Madras ruling because it dealt with an appeal by the defendant from a preliminary decree. But if a final decree is passed for an amount whether very much less or very much more than the original value of the suit, "in either case it is beyond question that the defendant, if he desired to appeal, would have to value his memorandum of appeal at the amount of the decree actually passed against him, whatever that amount might be." The test which is generally laid down in determining what is the proper Court-fee payable on a memorandum of appeal is "what is the value of the relief granted which is sought to be got rid of.[14] The basic principle is that in an appeal against the final decree, the unsuccessful party is not allowed to put an approximate or tentative value, but has to put Court-fee *ad valorem* on the ascertained amount which is the real value of the subject-matter in appeal.[15]

304. FORUM OF APPEAL.—In a suit for accounts, the determination of the forum of appeal, from the *preliminary* decree, depends upon the valuation of the suit for purposes of jurisdiction; and, the fact that the amount ultimately to be found may or may not exceed the valuation cannot disturb the course of

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(12) 39 Mad. 725 F.B.=33 I.C. 602=30 M.L.J. 402.

(13) 66 I.C. 841=44 All. 542=1922 All. 228=20 A.L.J. 416.

(14) *Mithumal* v. *Bashomal,* 1929 Sind 161=116 I.C. 110.

(15) See and *Cf. Shivandas Motumal* v. *Hari Ram,* 1933 Sindh 322 (323).

appeal.[16] But, where an amount in excess of the tentative value in the suit is awarded, the amount ascertained by the Court to be due to the plaintiff, and not the sum at which he values his claim approximately and tentatively, must be regarded as the value of the suit for the purpose of determining the forum of appeal.[17] This case, follows the view taken in the two PUNJAB cases of *Mannamal* v. *Abdul Aziz*,[18] and *Mannalal* v. *Samandu*,[19] and, in the CALCUTTA case of *Ijjatullah* v. *Chandra Mohan*,[20] and is supported by the decision of the BOMBAY HIGH COURT in *Ibrahimji Haji* v. *Bejanji Jamshedji*.[21] The BOMBAY HIGH COURT, has, similarly, held in *Jankibai* v. *Chimna Das*,[22] that in an appeal from a final decree Court-fee must be paid *ad valorem* on the decretal amount. The rule followed by the CALCUTTA HIGH COURT is laid down thus:—"Where a plaintiff fixes a certain sum as the amount of his claim only approximately or tentatively, and prayes that the amount of his claim may be ascertained in the course of the suit, then the amount found by the Court to be due to him must be regarded as the value of the original suit for the purpose of determining the forum of appeal.[23] The MADRAS HIGH COURT in *Putta Kannayya*, v. *Rudrabhatla*[24] and the ALLAHABAD HIGH COURT, in *Muhammad Abdul Majid* v. *Ala Bux*,[25] have, however, adopted the view that the amount at which the plaintiff values his relief, though approximately, determines the *forum* of the suit as well as of appeal. As Sir Shadilal observes "a difference of opinion undoubtedly exists on the subject," but the rule consistently followed in the Punjab and N.-W.F.P.), is as stated by the LAHORE HIGH COURT. The ALLAHABAD HIGH COURT, holds, that in order to determine the proper appellate Court what is to be looked is the value of the original suit, that is to say, the amount or value of the subject-matter of the suit, and the value must be taken to mean the value assigned by the plaintiff in his plaint and not the value as found by the Court, unless it appears that either purposely, or through gross negligence the true value has been altogether misrepresented by the plaintiff.[26] It follows *Madho Das* v. *Ramji*

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(16) 1930 Lah. 832=128 I.C. 491 (Sir Shadilal, C.J., and Abdul Qadir, J.).

(17) 9 Lah. 23=1928 Lah. 157=110 I.C. 631=29 P.L.R. 320. (Sir Shadilal and Zafar Ail, JJ.).

(18) 58 P.R. 1902.

(19) 46 P.R. 1906=94 P.L.R. 1906=62 P.W.R. 1906.

(20) 34 Cal. 954=6 C.L.J. 255=11 C.W.N. 1133 F.B.

(21) 20 Bom. 265.

(22) 57 I.C. 579=22 Bom. L.R. 811.

(23) 34 Cal. 954=6 C.L.J. 255=11 C.W.N. 1133; F.B.

(24) 40 Mad. 1=39 I.C. 439=1917 M.W.N. 367=5 L.W. 580=32 M.L.J. 221.

(25) 47 All. 534=86 I.C. 1055=1925 All. 376=23 A.L.J. 216.

(26) *Muhammad Abdul Majid* v. *Ala Bux*, 86 I.C. 1055=47 All. 534=1925 All. 376.

Patak,[27] in this respect and also *Sri Laman Lalji v. Deraj*.[28] But it does not follow the Calcutta Full Bench case of *Ijjatullah* v. *Chandra Mohan*,[29] based upon an earlier case of Golap Sundari v. *Indra Kumar*.[30] The Allahabad view is supported by the MADRAS FULL BENCH decision in *Putta Kannayya* v. *Rudrabhata*.[31]

305. COMBINED OR SEPARATE APPEALS.—The defendant may appeal against the whole decree, both the preliminary and final, in a suit for account.[32] Where in a suit for accounts, the defendants appealed against a preliminary decree made against them, and pending the appeal, a final decree was passed in the trial Court, and, thereupon the defendants brought an appeal against the final decree, it was held that the amount payable upon the memorandum of appeal is governed by the same words as governed the plaintiff's liability to pay Court-fee when he brought his suit, *viz.*, S. 7, (iv) (*f*), and that Art. 17, Sch. 2 could not be applied. The mere fact that under S. 11 of the Court-Fees Act, the plaintiff would have to pay a fee to enforce the liability was not a matter which affected the question of Court-fee on appeal against the decree with a view to get rid of the liability thereunder. However, the Court held, that for the purposes of the appeal, "the defendants will get credit for what they have already paid in connexion with the appeal from the preliminary decree, the principle being that the defendants are in the end resisting certain claim and on that they have come to Court and they do not have to pay the Court-fees twice over."[33] The MADRAS HIGH COURT, has likewise held *In re Supputhayammal*,[34] that where the same party appealing first from preliminary decree, pays *ad valorem* Court-fee, he need not pay any *ad valorem* Court-fee again on appealing from final decree afterwards. The Court was prepared to follow and act upon the CALCUTTA decision, in *Kanchan Mandar*,[35] and also the decisions in the PATNA case of *Ram Mander*,[36] and LAHORE case in *Budhu Ram* v. *Naimat Rai*,[37] with certain reservations. The MADRAS HIGH COURT observes "that there are difficulties in extending the doctrine to cases where the appeal against the final decree is filed after the decision in the appeal on the preliminary decree. If a plaintiff's suit for accounts is dis-

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(27) 16 286=A.W.N. (1894) followed in *Sudarshan* v. *Ram Pershad*, 7 I.C. 385=33 All. 97=7 A.L.J. 963.

(28) 5 I.C. 875=32 All 222=7 A.L.J. 203.

(29) 34 Cal. 954; F.B.

(30) 1 I.C. 86=13 C.W.N. 493.

(31) See F.N. 140, *Supra*.

(32) 39 Mad. 725 F.B.

(33) *Kanti Chandra* v. *Radha Raman*, 1929 Cal. 815=57 Cal. 463.

(34) 62 M.L.J. 624=35 M.L.W. 621.

(35) *Kanchan Mandar* v. *Kamala Prasad*, 16 C.L.J. 564=15 I.C. 572.

(36) *Ram Mandar* v. *Maharani Nawlakhbati*, 1924 Pat. 694=3 Pat. 815.

(37) 1923 Lah. 632=4 Lah. 406.

missed on the ground that the defendant is not accountable, and he appeals and gets a preliminary decree in his favour in appeal, and then in the first Court a final decree is passed from which also he appeals disputing the amount decreed, there seems to be little justification for the argument, that he need not pay the fee on the amount disputed in appeal. Similarly in the case of a defendant who has appealed from a preliminary decree, if the appeal is dismissed, and then a final decree is passed from which also he appeals disputing the amount, there seems as little justification for saying that he need not pay the fee on the amount disputed in appeal. In both cases there is no ground for saying that the earlier appeal contemplated consideration of a final decree which had not and which might not come into existence. In those cases the fee in appeal would be governed by Art. 1 (Sch. I).''

306. CONCLUSION.—A brief survey of the discussion, and the resulting conclusion may be noted.

(1) A suit for account, within the meaning of S. 7, (iv) (*f*) is one in which accounting, under a liability of the defendant, is demanded as a substantial relief, and the plaintiff is not claiming a mere declaration, with or without the prayer for accounts as an ancillary relief; and he is not claiming an ascertained sum of money, though the accounts may have to be gone into.

(2) As regards valuation of a suit for accounts, in the original Court, the *plaintiff* shall state, the amount at which he values the relief sought, and pay *ad valorem* Court-fee on such value. This value may be a rough and ready approximation, subject to the safeguard provided under S. 11, Court-Fees Act, and the procedure under O. 7, R. 2, Civil Procedure Code; and, according to some High Courts, it may be arbitrary, and tentative.

(3) The value for Court-fee determines the values for jurisdiction under S. 8, Suits Valuation Act; but the jurisdiction to entertain the claim is to be distinguished from the jurisdiction to decree the claim. Three views prevail, one that the Court entertaining the claim can pass decree beyond its pecuniary limits on a rendition of accounts: second, that it cannot do so, but must limit its decree to amount within its pecuniary jurisdiction: and thirdly, that the plaint should be returned for presentation to Court of competent jurisdiction.

(4) In a suit for account, the approximate value of the suit at the start, may be changed to real ascertained value, and the value of relief in appeal, and in the suit may not be co-extensive:

(5) An appeal from a preliminary decree filed by the plaintiff, whose claim is non-suited is to be valued for purposes of jurisdiction and Court-fee, at the value of the relief stated by the plaintiff.

(6) Where the subject-matter in the appeal is co-extensive with that in the suit, and the defendant appeals, two opposite views prevail.

(*a*) The Madras Full Bench, followed by Bombay, Sindh, Lahore, etc., holds that the defendant is bound to adopt the plaintiff's valuation for an appeal against preliminary decree.

(*b*) The ALLAHABAD HIGH COURT, followed by Patna etc., holds that the defendant is free to put his own valuation in appeal: and that plaintiff, for purposes of appeal, means the appellant, whether plaintiff or defendant.

(7) Where the subject-matter of appeal is not co-extensive, the view of most of the High Courts is that the defendant is bound to pay Court-fee only against part of preliminary decree objected to, *viz.*, on the value of the subject-matter in appeal.

(8) The Privy Council view is that plaintiff-appellant is within his right in putting a reasonable value on his appeal, including prayer for dismissal of final decree passed in favour of the defendant. This ruling has been variously, and, almost irreconcilably, interpreted by different High Courts.

(9) In appeal from *final* decree, the amount being ascertained, the better view seems to be that the plaintiff, or the defendant will have to value the subject-matter of the appeal both for purposes of Court-fee, and jurisdiction, at the amount of *final* decree.

(10) If separate appeals are prepared against the preliminary and final decrees, it is hard on the appellant to pay *ad valorem* Court-fee twice over. A combined appeal is allowed against the final decree, including the preliminary decree, subject to bar by limitation.

S. 7, *Cl.* (5). *Suits for possession, of land, houses, gardens, etc.*

Synopsis.

I. Legislative Changes, 307.
II. Scope of the Paragraph, 308-317.
III. Statutory Valuation, 318-319.
IV. Mode of Valuation of Suits for Jurisdiction, 320.
V. Valuation in appeals, 321.
VI. Suits falling under S. 7 (v), 322.

307. I. **LEGISLATIVE CHANGES.—Local Amendments**, have been made by Act III of 1932, in Assam; by Act I of 1932, in Bihar and Orissa; by Act II of 1932, in Bombay; by Act V of 1922, in Madras; and, by Act III of 1932, in the United Provinces, under which the statutory value of land has been enhanced. as follows.

(a) Assam: "In sub-clause (*a*) of clause (v), for the word "ten", the word "twenty" shall be substituted.[38]

(b) Bihar and Orissa: "In clause (*a*) of S. 7 (v) of the Principal Act, for the word "ten" shall be substituted the word "twenty", and in clause (*b*) of the said section for the word "five" shall be substituted the word "ten".[39]

(c) Bombay: "In clauses (1), (2) and (3) of the proviso to paragraph (v) for the words "five", "ten" and "ten", the words "seven and a half", "fifteen", and "fifteen", shall respectively, be substituted.[40]

(d) Madras: "In S. 7 (v) of the Principal Act—in (*a*) for the word "ten", the word "twenty" shall be substituted;

—in (*b*) fort the word 'five,' the word 'ten' shall be substituted;

and after clause (*d*) the following proviso shall be substituted for the existing proviso:—

'Provided that if rules are framed under S. 3 of the Suits Valuation Act, 1887, for determining the value of land for the purpose of jurisdiction, the value so determined shall be deemed to be the value of the land for the purposes of this paragraph.'[41]

(e) United Provinces: "In paragraph (v), of S. 7 of the said Act the word "ten" in clause (*a*) shall be read as "twenty" and the word "five" in clause (*b*) shall be read as "six".[42]

308. II. SCOPE OF THE PARAGRAPH—General Observations.—In this clause, the valuation of suits for possession of lands, houses, and gardens etc., is provided for, on statutory basis of mode of calculation for the purpose of Court-fee. The word "*suit*" includes appeals,[43] and the word "*possession*" means possession of any kind, proprietary,[44] or under-proprietary,[45] as full owner, or under a limited or derivative title,[46] and, the expression is not restricted to beneficial

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(38) Assam Act, III, of 1932, S. 2.

(39) Bihar and Orissa Act, I, of 1922, S. 3.

(40) Bombay Act, II of 1932, Part III. S. 12 (*c*).

(41) Madras Act, V of 1922, S. 8.

(42) United Provinces Act, III of 1932, S. 3.

(43) *Rup Narain Singh* v. *Bishwa Nath Singh*, 68 I.C. 265=44 All. 629=1922 All. 358=20 A.L.J. 587, and see *Lakbainsingh* v. *Ramkishendas*, 43 I.C. 179=40 All. 93.

(44) *Sunder Lal* v. *Murray*, 16 I.C. 963=16 C.L.J. 375, *Mahomed Ibrahim* v. *Bhymeah Ismailji*, 1 L.B.R. 303 and, *Amir Hassan* v. *Hafiz Muhammad*, 128 I.C. 779.

(45) *Swaminath* v. *Jangbahadur Singh*, 58 I.C. 132=7 O.L.J. 403=24 O.C. 29; *Hubibal Hossein* v. *Mohamed Reza*, 8 Cal. 192=10 C.L.R. 385.

(46) *Telumal* v. *Lalsingh*, 20 P.R. 1893; *Ramkishan* v. *Syed Brahmin Shah*, 56 P.R. 1892.

ownership.[47] The mode of calculation of fee under this clause is on the *value of the subject matter,*'' as distinguished from the ''value of the relief sought'', as in the preceding clause; and, instead of an *ad valorem* Court-fee on the valuation put by plaintiff, this clause requires Court-fees at statutory rates or the market-value as provided in the different sub-clauses of this section.

309 **SUIT FOR POSSESSION, AS PRINCIPAL RELIEF**.—The mode of valuation, in this paragraph, is applicable only when the suit is for possession of land, houses, or gardens. A SUIT FOR POSSESSION, is to be distinguished from suits for declaration of title, and recovery of possession as a consequential relief or a suit for setting aside a document, and for recovery of possession of property as ancillary relief.[48] If the declaration sought for is unnecessary, or superfluous, the suit would still be a suit for possession falling under S. 7 (v), of the Court-Fees Act; but the case would fall under S. 7, (iv) (*c*), rather than under S. 7 (v), where the relief of declaration is essential for plaintiff's success in the possessory relief.[49] Where the essential relief sought in a suit is recovery of possession, the valuation of the property for purposes of Court-fee is to be assessed under S. 7 (v) of the Act:[50] although a prayer for declaration is added consequential to the success of the plaintiff in their substantial claim in the suit.[1] The question is, whether the relief as to possession of land is the sole or the main relief in the case.[2] In a suit for possession *simpliciter*, Court-fee need be paid only on the actual relief valued under S. 7 (v) of the Act: *e.g.*, where the plaintiff does not claim a declaration in his plaint, that the decree under which the defendant holds possession is not binding on him,[3] or, where there is no prayer for a declaration as to validity of plaintiff's adoption as a necessary preliminary to his right to recover possession of the land in suit.[4] In *Sarju* v. *Sheoraj*,[5] the suit was held to be one for possession of land, although the plaintiff had asked for setting aside the sale in favour of the defendant, not as a separate relief,

(47) *Ghazaffur Hussain* v. *Yawar Hussain*, 28 All. 112=2 A.L.J. 591=(1905) A.W.N. 208, also see *Parsotham Chand* v. *Mayanand*, 1932 All. 593.

(48) *Thangachi Ammal* v. *Mohamed Moideen*, 1933 Mad. 231 (2).

(49) Sec. II, 223-231, *ante*: Suits for ''*declaration and possession*''. 68 I.C. 265=44 All. 629=1922 Alk. 358; 70 I.C. 101=49 Cal. 880 =1922 Cal. 506; 119 I.C. 577=1929 Mad. 529; 1929 Nag. 276; 94 I.C. 179=1926 Oudh 380; 120 I.C. 398=1929 Oudh 419; 124 I.C. 420=1930 Oudh 104; 1930 Oudh 368=126 I.C. 688; and 68 I.C. 700=2 Pat. 125= 1922 Pat. 615.

(50) *Rup Narain* v. *Bishwa Nath*, 44 All. 629=68 I.C. 265=1922 All. 358.

(1) *Radha Kant* v. *Debendra Narayan*, 70 I.C. 101=49 Cal. 880= 1922 Cal. 506.

(2) *Babuappa* v. *Ramachandra*, 1929 Nag. 276; also *Sarju* v. *Shoraj*, 94 I.C. 179=1926 Oudh 380.

(3) *Babnappa* v. *Ramchandra*, 1929 Nag. 276.

(4) *Maung Shein* v. *Ma Lon Ton*, 1931 Rang. 319=9 Rang. 401.

(5) 94 I.C. 179=1926 Oudh 380=10 O.L.J. 124.

but as a part of his cause of action to claim for possession. Similarly, the suit would be one for possession, where this is the principal prayer, although a prayer for declaration or cancellation of a document is asked in the alternative.[6] The Oudh Court has clearly set forth the principles governing suits when possession as well as a declaration is asked for. It was held in ***Deoraj*** v. ***Kunj Behari***,[7] that Court-fee need be paid only on the relief for possession where this is the principal relief claimed, and the relief for declaration is only ancillary to it. This view was followed in *Afzal Hussain* v. *Shafiqunnessa*,[8] and in *Shahar Bano Begam* v. *Raj Bahadur Singh*.[9] The Patna High Court, similarly holds that where a declaration is not necessary to enable the plaintiff to obtain possession of property claimed, the suit would not fall under S. 7, (iv) (*c*), merely because a declaratory decree is asked for as a surplusage.[10]

310. ADDITIONAL RELIEF.—Possession may be claimed not as the sole or main relief in the case, but as an additional separate relief. In that case also the suit will have to be valued as regards the prayer for possession under S. 7 (v) of the Act; *e.g.*, where in a suit for specific performance of a contract of sale, the plaintiff also claims possession of the property agreed to be sold, the plaint has to be stamped for both these reliefs separately, for purposes of original suit, and the same court-fees has to be paid also on appeal.[11]

311. ALTERNATIVE RELIEF.—Where possession is claimed as an alternative relief, it has to be valued under this paragraph, the court-fee is payable on the higher relief, whichever it may be.[12] The greater relief is one which requires a higher court-fee, and this will include the lesser relief.[13]

312. LANDS.—The meaning and significance of the word "Land" and "houses" as used in the Court-Fees Act, has been considered in *Durga Singh* v. *Bisheshar Dayal*.[14] It was observed, that "the word *land* in its wider signification would do doubt include not only the surface of the ground, but also everything on or under it, for *cujus est solum ejus est usque ad coelum.*" The learned Judges were "not aware that there is any definition of the word 'land' as used in the statutes in this country." But,

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(6) *Awadhraj Singh* v. *Dharamwrajkuar*, 1929 Oudh 419=6 O.W.N. 704=120 I.C. 398.

(7) 124 I.C. 420=1930 Oudh 104=5 Luck. 474=6 O.W.N. 1105, also see *Shakar Bane* v. *Raj Bahadur*, 1933 Oudh 505.

(8) 126 I.C. 688=1930 Oudh 368=7 O.W.N. 571.

(9) 1933 Oudh 505.

(10) *Ramsuran Parsad* v. *Gobinddas*, 68 I.C. 700=2 Pat. 125=1922 Pat. 615=3 P.L.T. 704; (S.B.).

(11) *Ramnidh* v. *Balkaran Singh*, 60 I.C. 654=23 O.C. 388.

(12) *See* S. 7, *ante* "Alternative relief": also see *Awadhraj Singh* v. *Dharamraj Kuar*, 120 I.C. 398=1929 Oudh 419.

(13) 78 I.C. 530=1925 Pat. 193; 100 I.C. 913=1932 Mad. 158 (159).

(14) (1898) 24 All. 218=22 A.W.N. 27.

the word has been defined thus, in the Punjab Tenancy Act, XVI of 1887, S. 4, Cl. (1) *"Land"; means* land which is not occupied as the site of any building in a town or village, and is occupied or has been let for agricultural purposes, or for purposes subservient to agriculture, or for pasture, and includes the sites of buildings and other structures on such land." The definition of "land" as given in the Land Alienation Act extends the above definition as below:—

Land includes:—

(*a*) the sites of buildings and structures on such land;

(*b*) a share in the profits of an estate or holding;

(*c*) any dues or any fixed percentage of the land revenue payable by an inferior land owner to a superior landowner;

(*d*) a right to receive rent;

(*e*) any right to water enjoyed by the owner or occupier of land as such; and,

(*f*) any right of occupancy.

The learned Judges, proceeded to say, that "*in the Court-Fees Act the word would seem to be used in a restricted sense,* for the Act provides a distinct mode of ascertaining the amount at which relief should be valued according as the subject-matter of the suit is land, or houses, or gardens. If the subject-matter of the suit is land, there are two modes of computing the Court-fee according as the land is revenue-paying or not, and if it be a house or garden another and distinct mode of computation is provided." The word "land" was therefore, *held to be used in the section in contradistinction to houses, or gardens,* and the valuable indigo factory was to be valued for purposes of Court-fee separately according to its market-value as coming within the word "house" as used in the Court-Fees Act, which was comprehensive enough. The substantial subject-matter of the suit, so far as the indigo factory was concerned, was not the site of the factory, but the factory itself, and the fact that the site was assessed with Government Revenue, could not be regarded in determining the true meaning of S. 7 (v) of the Court-Fees Act.

313. "**LAND SUITS**."—In the Punjab, bearing in mind the definition of the word "land" as given in the Tenancy Act, the purpose for which land is used is the essential determining factor. If it is agricultural or pastoral then it is 'land', but if it is used for building purposes in a town or village then the land is not 'land'. It does not cease to be agricultural land merely because at the time of sale or of suit it bears no crop, or because a part of it is under the site of a building. Land used for purposes subservient to agriculture includes the sites of such structures as protective bunds, chhappars, cattle-sheds; thrashing floor, etc. A well is 'land,.[15] A suit for share in a well sunk for

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(15) *Imamdin* v. *Makha*, 62 P.R. 1891; *Hayat* v. *Sant Ram*, 20 P.R. 1894; *Dhami Khain* v. *Mehtab Khain*, 40 P.R. 1893; *also see* Mad. H.C. Proceedings, No. 1369, dated 29th August, 1879.

the purpose of irrigating agricultural land, was a "land suit," as the well itself was a structure on the land used for purposes subservient to agriculture, and therefore included in the definition of "land", by the terms of S. 4 of Act XVI of 1887. A "land suit" as defined in the Punjab Courts Act, means a suit relating to *land* as defined in S. 4 (i) of the Punjab Tenancy Act, 1887; accordingly, a suit for pre-emption of certain land within the municipal limits of Rawalpindi, though outside the city walls, which had been partly built upon at the time of the institution of the suit, was not a "land-suit".[16] The watercourse used for purposes of irrigation is 'land'.[17] A *Ghairmumkin* land outside the *abadi*, which had *Khurlies* built, and *Bhusa* stacked on it, and which was shown in the revenue records under a separate *Khasra* number was "land" within the definition of S. 4 (i) of the Tenancy Act.[18] But, a village graveyard,[19] or the site of a water mill,[20] or the land used for the manufacture of saltpetre,[21] is not "land," because it is not occupied for agricultural purposes, or for purposes subservient to agriculture. Again trees are not "land", and in a suit for land, trees standing thereon need not be separately valued[22] and a suit for possession of a share in an orchard, *i.e.*, in the fruit trees; not including the land occupied by them, is not a land suit, as the trees growing on a land, can be sold, let or mortgaged independently of the land on which they stand.[23] Similarly, a suit for date-trees only, no relief being asked, or claim made, as to the land upon which the trees stand was held not a "land suit," as defined in the Punjab Courts Act, 1884.[24] A suit for possession of part of public road, encroached on by the defendants, who had built a wall on it, was held not to be a land suit, in spite of the fact that the wall was intended to be a boundary to an agricultural field.[25] Land occupied by a tank used for watering cattle; and excavating earth to make brick, *i.e.*,

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(16) *Hayat* v. *Sant Ram*, 20 P.R. 1894. (Held that the value of the suit was not increased because the defendant had established on equitable claim to compensation for the building he had erected on the land before plaintiff could take possession of land and building) also.

(17) *Suetan Ali Shah* v. *Kadir Baksh*, 1 P.R. 1892 (F.B.).

(18) *Ganda Singh* v. *Nathu Singh*, 12 P.R. 1907, also see *Abu Hassan* v. *Ramzan Ali*, 4 All. 381=2 A.W.N. (1882), 73. (*Killa* included in "rights and interests in the village.")

(19) *Ilabi Baksh* v. *Fatta*, 20 P.R. 1892.

(20) *Mutsaddi* v. *Sawan*, 41 P.R. 1892, *Farmanali* v. *Iman Din*, 77 P.R. 1904; *Devta Jambu* v. *Haridas*, 39 P.L.R. 1912.

(21) *Karorimal* v. *Wasawa*, 83 I.C. 171=1923 Lah. 462.

(22) *Dhanidas* v. *Aya Ram*, 15 P.R. 1892, (F.B.); *Yaru* v. *Adil*, 46 P.R. 1893, also see *Achhrumal* v. *Maula Baksh*, 84 I.C. 89=1925 Lah. 29=5 Lah. 385. (Trees not included in land), also see *Subramania Ayyar* v. *Rama Iyer*, 105 I.C. 881=1927 Mad. 1002=54 M.L.J. 67.

(23) *Dhani Das* v. *Aya Ram*, 15 P.R. 1892 (F.B.).

(24) *Yaru* v. *Adil*, 46 P.R. 1893.

(25) *The Municipal Committee, Hoshiarpur* v. *Ali Akbar Khair*, 42 P.R. 1900.

not for agricultural purposes, or purposes subservient to agriculture, is not "land."[26]

314. DIFFERENT CLASSES OF LANDS.—In this clause, there are four sub-clauses, dealing with four different classes of lands according to nature of the holding, and the revenue assessment. Under cl. (*a*), the land in suit must be recorded in revenue papers as separately assessed, or, the land must form an entire estate or a definite share of an estate, paying land revenue to Government, where such revenue is permanently settled. In a similar case, where the revenue payable in respect of the estate is not permanently settled, sub-cl. (*b*) will apply. Sub-cl. (*c*) lays down that where the land pays no such revenue or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue and net profits have arisen from the land during the year next before the date of presentation of the plaint, the value of the subject-matter shall be deemed to be 15 times such net profits; but where no such net profits have arisen therefrom, the value of the subject-matter shall be the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood. Sub-cl. (*d*) provides that where the land forms part of an estate paying revenue to Government but is not a definite share of such estate, and is not separately assessed as mentioned in sub-cl. (*d*), the value of the subject-matter shall be deemed to be the market-value of the land. To these sub-clauses is added an explanation, that the word "estate," means any land subject to the payment of revenue, for which the proprietor or farmer or *raiyat* shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue. The determining factor, for the application of sub-cls. (*a*) and (*b*), "is the land in suit and not a larger property in which it may be included", and as regards sub-cl. (*c*), it must appear that the land in suit pays no revenue, permanently or temporarily settled thereon, or that it has been partially exempted from such payment, or is charged with a fixed payment in lieu of such revenue. Accordingly, it was held in *Chandra Narayan Singh* v. *Ashutosh De*[27] that a *Ghatwali* estate forming part of the estate of the *Zemindar* of *Birbhum*, for which the whole of the revenue collection by Government, was not payable as revenue to Government, but was only retained in part as revenue, and the other part was made over to the proprietor of the estate from which the *Ghatwali* tenures had been carved out, did not come under sub-cl. (*a*), or (*b*), or (*c*) of the S. 7, cl. (v), and only sub-cl. (*d*) was applicable. "The land in suit formed part of an estate paying revenue to Government, but did not constitute a definite share of such estate, nor was it separately assessed with such revenue."[28] The revenue on the land may be permanently settled, (*Zamindari*), or not perman-

(26) *Tej Ram* v. *Tulsi*, 48 P.R. 1898.
(27) 23 I.C. 89=41 Cal. 812=19 C.L.J. 342=18 C.W.N. 659.
(28) *Ibid*.

ently settled (*Ryotwari*); or, it may be remitted in whole or in part, (as *Inams*); and the revenue collection may be directly payable to the Government (*Ryotwari* estates), or through the mediation of a proprietor under a separate agreement with the Government (*Nutta, Zamin, and Jagir, etc.,*) and the sub-cl. (*a*) relates to all lands paying the full revenue assessment under a permanent settlement; (*b*) ditto, but not permanently settled; Cl. (*c*), applies to lands free or partially exempt from assessment; while Cl. (*d*), applies to lands comprised in (*a*) or (*b*) which are not separately assessed parcels.

315. INTERPRETATION OF THE SUB-CLS. (a) TO (d).—The construction of S. 7, Cl. (v) (*a*) to (*d*), of the Court-Fees Act has been the subject of consideration in several reported cases. In *Godavarthy Sundaramma* v. *Gadavarthy Mangamma*,[29] it was held by the Madras High Court, that a land forming part of an entire area, covered by a particular *patta*, with a total revenue payable in respect of that *patta* recorded in the Collector's book, followed by particulars showing the rate charged per acre, from which revenue at a known fraction could be calculated for any piece of land, was not "*separately assessed*" to land-revenue for the purposes of S. 7 (v) (*a*); and, its value had to be calculated on the market-value basis under S. 7 (v) (*d*) of the Court-Fees Act. The Cl. (v) (*a*), refers to a definite *fractional share* of an estate, for a half, one-third, etc. "That view was followed in two unreported cases of Madras High Court, Second Appeals Nos. 886 of 1917, and 711 of 1915, and also by Allahabad High Court in *Chandan* v. *Bishen Singh*,"[30] and has been acted upon by MADRAS HIGH COURT in *Kandaswamy Goundan* v. *Subbai Goundan*.[31] It has been explained in the CALCUTTA case of *Bunniah Lal* v. *Shyanlal*,[32] that separate assessment is only necessary in cases where the share is not definite, and, for computing the value according to Cl. (*a*) or (*b*) it is not necessary that the definite share should also have been separately assessed to revenue. Similarly, in a Reference under the Court-Fees Act, S. 5,[33] Burkitt, J., of the Allahabad High Court, affirmed the decision of the Taxing officer, who had pointed out "that the Court-fee is payable on 5 times the Government revenue where the subject-matter of the suit is:—(*a*) an entire estate or definite share of an estate paying revenue to Government; or, (*b*) part of an estate recorded as separately assessed, or, (*c*) a fractional part of a part recorded as separately assessed by virtue of the notification No. 4650, dated the 10th of September, 1889. In all other cases the fees is payable on the market-value."

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(29) 47 I.C. 543=34 M.L.J. 558=8 L.W. 88.

(30) 11 I.C. 816=33 All. 630=8 A.L.J. 798.

(31) 77 I.C. 781=1924 Mad. 646=46 M.L.J. 345=34 M.L.T. 92 =1924 M.W.N. 388.

(32) 12 C.W.N. 990.

(33) 16 All. 493.

316. THE PRINCIPLE OF THE RULES—The principle of these rules seems to be this:—Where the revenue is separately assessed, and the suit in respect of a fractional part, say $\frac{1}{4}$ or $\frac{1}{5}$ the fee may be paid on five times the $\frac{1}{4}$ or $\frac{1}{5}$ of the revenue assessed on that part. In a Punjab case, *Gandamal* v. *Mahtabo*, a $\frac{2}{1\,5}$ portion of land in a joint *Khata*, was valued on the basis of 5 times the revenue payable on the whole *Khata*.[34] But where the suit is not for a fractional part, but for *distinct* plots, the fee must be paid on the market-value. The fractional share bears the same fraction in all the plots in that part, and is not affected by the quality, good, bad, waste and valueless of the lands. But entire fields or plots, not a definite share "may be the most valuable portion of an estate assessed to revenue, and the rest of it may be valueless land."[35] Unless these valuable portions are separately assessed to revenue, the safer test would be the market-value under Cl. (*d*), than a calculation based on the revenue of the entire area. This has been distinguished in a Punjab case, *Fata* v. *Khain Bahadur*[36] by Clark, C. J., where it was held that the value for purposes of jurisdiction, in a suit for pre-emption of a *Khata* separately assessed to revenue, is 30 times the rateable portion of the revenue payable in respect of that part.

317. **GOVERNMENT NOTIFICATION**.—It may be noticed, that the Notification of the Government of India No. 4650, dated the 10th September, 1889, above referred to, remedies a lacuna, in respect of a fractional share of the *part* of an estate that might be separately assessed to revenue. This omission in the Act is supplied thus:—"When *part* of an estate paying annual revenue to Government under a settlement which is not permanent, is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession of or to enforce a right of pre-emption in respect of a *fractional share* of that *part* shall for the purposes of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed *five* times such portion of the revenue separately assessed in that part, as may be rateably payable in respect of that share."[37] A part of an estate separately assessed means any portion of the estate with a specified assessment on that part. It becomes an estate for all practical purposes, and court-fee is payable on the basis of a specified assessment.[38]

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(34) 67 P.R. 1878.

(35) 16 All. 493.

(36) 46 P.R. 1908=172 P.L.R. 1908=94 P.W.R. 1908.

(37) See *Subramaniah Ayyar* v. *Rama Iyer*, 105 I.C. 881=1927 Mad. 1002=54 M.L.J. 67. (*Held*, that the words "fractional share" in the Notification of September, 1889, under the Court-Fees Act, cover not only a case where the plaintiff claims a certain fraction of a survey Number but also where be claims a certain definite area within the Survey Number.

(38) *Ishridial* v. *Kishendas*, 1 A.W.N. (1881) 5. *Held*, that land separately assessed, with non-permanent settlement, is to be valued according to 5 times the revenue payable in respect of the shares, and not one computed according to the estimated value of the shares.

318. **(III) STATUTORY VALUATION FOR COURT-FEE—VALUATION IN CLS. (a), (b) AND (c).**—The valuation, (or value) referred to in Cls. (*a*), (*b*) and (*c*) of S. 7 (v), is a value prescribed by statute, but the value referred to in sub-Cls. (*d*) and (*e*), of the same clause is the market-value, as representing its real value. Reliefs arising out of the same cause of action have to be valued together, and Court-fee is payable on the aggregate value of the two reliefs, though valued separately.[39]

319. **MARKET-VALUE.**—Where sub-cls. (*d*) and (*e*) of S. 7, Cl. (v) are applicable, the subject-matter in dispute is to be valued for purposes of Court-fee at the "market-value" of property in suit.[40] In a suit for possession as usufructuary mortgagee, the Court-fee payable is on the market-value of the mortgagee-interest in the property, *i.e.*, the mortgage-money on payment of which the property can, at any time, be redeemed.[41] A temple property which is inalienable and absolutely devoted in perpetuity to religious purposes has no market-value within the meaning of the sub-clause.[42] In suits to recover indigo factory Court-fee is payable not according to the value of the site, but on the market-value of the buildings of the factory.[43] But in suits for recovery of site after demolition of the buildings, and the removal of the materials, unlawfully erected thereon, by the defendant, the value of the land alone without the buildings, will be considered for purposes of Court-fee.[44] However, in suits to recover the site along with the buildings, both site and the buildings must be valued for purposes of Court-fee.[45]

320. **(IV) MODE OF VALUATION OF SUITS FOR JURISDICTION.**—The valuation for Court-fee, in a suit for possession under this paragraph, is not necessarily the valuation for jurisdiction. Rules may be framed by the Local Governments for determining the valuation of land for purposes of jurisdiction (S. 3 of Suits Valuation Act) and such valuation will govern Court-fees (S. 6, Suits Valuation Act, and proviso to Cl. (*d*) Madras). The valuation for jurisdiction in a suit for possession after a decree for foreclosure in mortgage by conditional sale is not to be calculated under the Court-Fees Act.[46] In a suit for

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(39) In re *Parameswara Pattar*, 54 Mad. 1=1930 Mad. 833=59 M.L.J. 469 (F.B.), follows *Kishori Lal* v. *Sharat Chunder Mozumdar*, (1882) 8 Cal. 593=10 C.L.R. 359 (F.B.), *also see* 16 All. 401=(1894) A.W.N. 124.

(40) *Madhi* v. *Gajadhar*, 73 I.C. 244=1924 Oudh 163, also see *Jogendra Narain Singh* v. *Radha Prosad Singh*, 1932 Pat. 319.

(41) 73 I.C. 244, *supra*.

(42) *Rajagopala* v. *Ramasubramania*, 74 I.C. 198=46 Mad. 782=1924 Mad. 19=1923 M.W.N. 550=45 M.L.J. 274=18 L.W. 326 =33 M.L.T. 21 (F.B.) also see *Parsottamanandgiri* v. *Mayanandgiri*, 1932 All. 593=1932 A.L.J. 577.

(43) *Durga Singh* v. *Bisheshar Dayal*, 24 All. 218=22 A.W.N. 27.

(44) *Ramaswami* v. *Gandappa*, 7 M.L.J. 49; and *Namasivaya* v. *Subramania*, 24 M.L.J. 37.

(45) *Nibal Chand* v. *Uday Ram*, 1886 A.W.N. 106.

(46) *Ahelyabai Debya* v. *Shama Charan Bose*, 1 C.L.R. 473.

partition and separate possession of joint family property falling under S. 7 (v), according to the BOMBAY HIGH COURT, the market value of the land and houses in suit will determine the jurisdictional value of the suit.[47] A suit by a mortgagee, for possession, after closing the mortgage by conditional sale, under Reg. XVII of 1806, falling under S. 7 (v) of the Act, the valuation for purposes of jurisdiction, is at 30 times the revenue assessed upon the land in accordance with the rules made under S. 3, Suits Valuation Act[48] (*vide* Punjab Government Notification No. 225, dated 4th March, 1889). No rules have been framed by the Government of Madras, under S. 3, Suits Valuation Act; and, under the Madras Civil Courts Act, and the Madras City Civil Courts Act, the valuation for Court-fees, in a suit under S. 7 (v) is the valuation for jurisdiction.[49]

321. **(V) VALUATION IN APPEALS—VALUE OF RELIEFS SOUGHT.**—It was remarked, by Sir Kumaraswami Sastri, J., In in re *Porkodi Achi*[50] that "the current of authority is clearly in favour of the view that the value of an appeal is not in all cases the value of the suit as originally filed, but the value of the relief granted by the decree which a party wishes to get rid of". The governing rule applicable to appeals is laid down in Sch. I, Cl. (1) of the Court-Fees Act, according to which the proper fee payable upon a memorandum of appeal, not otherwise provided for in this Act, presented to any Civil Court, except those mentioned in S. 3, is to be calculated on the amount or value of the subject-matter in dispute. The expression "value" of "the subject-matter in dispute," in Sch. I, Cl. I, means the same thing as the words "the value of the subject-matter" used in S. 7, Cl. (v) of the Court-Fees Act, *i.e.*, the value as set out in the various sub-clauses (*a*) to (*e*) of Cl. (v), S. 7.[1] Accordingly, where a plaintiff obtained a decree for the recovery of possession of a half share of the lands sold to that defendant, under a certain document, by the plaintiff's father, on payment of a sum of money, and the defendant appealed, seeking to have the decree of the lower Court which directed the possession of the lands to be given to the other side, set aside, it was held, by the Madras High Court, that the subject-matter of the appeal was the land and not any money, and the method of valuation to be adopted in appeal was the one adopted in S. 7 (v), Cls. (*a*) and (*b*).[2] If the plaintiff had appealed in such a case, and contended that the amount payable by him is too large, and that it should be reduced by any particular amount, the subject-matter of the dispute in appeal would have been the difference between what

(47) *Dagdu* v. *Tota Ram*, 33 Bom. 658=11 Bom. L.R. 1074.

(48) *Telu Mal* v. *Lal Singh*, 20 P.R. 1893.

(49) Muthuswamy's Court-Fees Act, p. 115.

(50) 68 I.C. 444=45 Mad. 246 (256)=1922 Mad. 211=16 L.W. 624=41 M.L.J. 587=30 M.L.J. 88=1921 M.W.N. 854, *cf. Pathuma Umma* v. *Aliyammakkonath*, 110 I.C. 752= 1928 Mad. 929.

(1) In re *Garapati Butchi* v. *Seethayamma*, 85 I.C. 405=48 Mad. 652=47 M.L.J. 919=(1925) M.W.N. 15=1925 Mad. 323.

(2) *Ibid.*

he admitted was due and what the lower Court had declared to be due.[3] Similarly, it was held, by the ALLAHABAD HIGH COURT, in *Rup Narain* v. *Bishwa Nath Singh*,[4] that where property of which plaintiff is the joint owner has been sold without his concurrence, or authority, and the essential relief sought is the recovery of possession upon such terms as the trial Court may see fit to impose, and the decree passed is one for recovery of possession of property paying annual revenue to Government, the question in issue being the possession of land so assessed to revenue, the valuation of the property for purposes of Court-fee assessment in the suit, or appeal, should not be otherwise than under S. 7 (v) (*a*) or (*b*) of the Court-Fees Act. In a suit for ejectment, where Court-fee is paid on the value of the tenancy right, and the tenants' claim for a certain amount as compensation for improvements is disallowed, and the tenant appeals on the ground that the claim for improvements should have been allowed, the claim for improvements to the land is not the subject-matter of the suit, but is merely incidental to the decree for possession, and, the Madras High Court has held that on appeal even where the only question raised is as to the value of the improvements, the appellant should not be called upon to pay any fee other than that payable in a suit for possession of land.[5] This observation, however, must be regarded as made subject to the indication that the compensation is claimed as merely incidental to the decree for possession.[6] Where in a suit for possession, a relief for declaratory decree alone is asked in appeal, a Court-fee of Rs. 10 is sufficient; *e.g.*, in a suit for possession brought as transferee of a certain widow, where the claim is decreed prescribing a condition that plaintiff's possession should continue only during the lifetime of his transferor, and the plaintiff appeals to get this condition removed, he is in the position of a person in possession of the property who simply wants to clear his title, by obtaining a declaration that he had the full right of ownership to the property.[7] Similarly, where in a suit for declaration that a certain alienation made by the plaintiff's father was not binding upon his reversionary inter-

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(3) In re *Garapati Butchi Seethayamma*, 85 I.C. 405=48 Mad. 652 =47 M.L.J. 919=1928 M.W.N. 15=1925 M. 323; also see and *Cf*. *Wadhawa Singh* v. *Sundar Singh*, 59 I.C. 667=21 P.W. R. 1921. (*Held* that where a plaintiff is given a decree for possession of land on payment of a sum of money, and he appeals from the decree asking that he should be given possession without any payment, the Court-fee leviable on the Memorandum of Appeal is an *ad valorem* fee on the amount directed to be paid by the lower Court), and *Tikkan Ram* v. *Bosa Ram*, 67 I.C. 106=44 P.L.R. (Lah.) 777.

(4) 68 I.C. 265=1922 All. 358=44 All. 629=20 A.L.J. 587.

(5) *Brahmayya* v. *Lakshminarasimham*, 16 Mad. 310, followed, in 23 Mad. 84.

(6) *Pathuma Umma* v. *Aliyammakkanath*, 110 I.C. 752=1928 Mad. 929=citing *Sekharan Nair* v. *Kongot Eacharan Nair*, 3 I.C. 459 (In a suit for redemption, on appeal against decree directing redemption on payment of certain amount, where the defendant contests right of redemption, the Court-fee payable is the same as was paid by the plaintiff on his plaint), and in re *Garapati Butchi Seethayamma*, 85 I.C. 405=48 Mad. 652=1925 Mad. 323, *supra*, also in re *Tiruvangalath*, 92 I.C. 624=1926 Mad. 225.

(7) *Rupchand* v. *Fateh Chand*, 11 I.C. 977=8 A.L.J. 821=33 All. 705.

est, the plaintiff was given a decree subject to his paying a certain amount found to be for necessity to the defendant mortgagee, the LAHORE HIGH COURT has held that plaintiff in his appeal challenging the condition in the decree need not pay *ad valorem* Court-fee on the amount so challenged but that a Court-fee of Rs. 10 would suffice.[8] It was observed, that "it would be most unreasonable to hold that when the claim has been dismissed in part, the appellants should be required to pay Court-fee which is greater than the Court-fee which they would be required to pay if the suit had been wholly dismissed." This was also the principle laid down in *Hargari Singh* v. *Piran*.[9] It was held that in a pre-emption appeal by the vendee-defendent for a sum of money disallowed by the lower Court out of the price stated in the deed of sale, the difference of price was not to be taken as the measure for Court-fees; that the case being concerned with land for which an artificial value is fixed by special rules in this Province, Court-fee paid at five times *Jama* value, of the land in suit, was sufficient and "that it was not contemplated by the Legislature that the Court-fee payable on part of a whole claim in appeal is, in the absence of express direction to the contrary, to exceed the Court-fee payable on the whole claim".[10] In the case of a cross-objection claiming possession of an immoveable property, the Court-fee is payable *ad valorem* on the value of the property, which is the subject-matter in dispute, and not on five times the land-revenue in accordance with S. 7 (v) of the Court-Fees Act.[11] It was held by Tudball, J., in *Lakham Singh* v. *Ram Kishen Das*,[12] that the word "suits" in S. 7, must be held to include cross-objections as well as appeals.

322. VI. SUITS FALLING UNDER S. 7, Cl. (5).— The following suits have been held to fall under this clause.

(1) *Suit for possession of religious land.*—It has been held in *Maung Meik* v. *Kumara*,[13] that the mere fact that the land in suit is religious land, it is not incapable of a valuation, and it is to be valued under S. 7, (v) (*c*) with reference to the value of similar land in the neighbourhood.

(2) *Suit to set aside decree and sale in execution.*—A suit by an administratrix of the estate of her deceased husband, to set aside the decree against the former administrator of the estate, and the sale which took place in execution of that decree, as not binding on the estate fell within the scope of S. 7, Cl. (iv), of the Court-Fees Act.[14]

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(8) *Harbhagwan* v. *Amar Singh*, 83 I.C. 332=5 Lah. 137=1924 Lah. 530.

(9) 92 P.R. 1900.

(10) *Ibid.*

(11) *Bishan Sahai* v. *Chhotey Lal*, 85 I.C. 270=47 All. 89=1925 All. 119=22 A.L.J. 911, followed *Ishdat Tiwari* v. *Tameshwar Tiwari*, 83 I.C. 780=45 All. 537=1924 All 175.

(12) 43 I.C. 179=40 All. 93=15 A.L.J. 886.

(13) Per Heald, A.J.C., in 60 I.C. 5=3 U.B.R. (1920) 236.

(14) *Bai Meherbai* v. *Maganchand Motiji*, 29 Bom. 96=6 Bom. L.R. 853.

(3) *Suit by a reversioner on the death of a widow to recover possession* of immoveable property of her husband from her donee, is a suit coming under clause (v), and not under Cl. (iv) (*c*) of the Act, even though an unnecessary declaration that the gift is not binding on the plaintiff is asked for.[15] A similar suit, for land with trees standing thereon.[16]

(4) *Suit for recovery of possession of a Ghatwali Estate,* which forms part of an estate paying revenue to Government, but does not constitute a definite share of such estate, nor is it separately assessed with revenue.[17]

(5) *Suit to eject a tenant at fixed rates,* is a suit for possession of land within the meaning of Cl. (v) of S. 7 of the Court-Fees Act, and the valuation of such suit for the purposes of Court-fee and jurisdiction is the value of the subject-matter of the suit, that is to say, of the tenant right, not of the land itself, nor of merely one year's rent,[18] but the market values contemplated by law.[19]

(6) *Suit by landlord with a complete title, for the ejectment of a tenant* for breach of the covenant, is practically a suit for possession against the tenant, falling within S. 7, (v) (*e*) of the Act.[20]

(7) *A suit for possession of land, by reversioners, after the death of alienor,* on the basis of a decree for declaration previously obtained, ignoring the buildings erected on the land by vendee.[21] A suit by Hindu reversioners, asking that a sale-deed be declared null and void as against them and that possession of the property be granted to them, is an ordinary suit for possession of property, and the Court-fee payable thereon is five times the Government revenue.[22]

(8) *A suit, by mortgagee, for possession* by foreclosure of mortgage by conditional sale, under Regulation XVII of 1806, is one *"for possession of land"* within S. 7, (v) of the Court-Fees Act, and not a "suit by a mortgagee to foreclose the mortgagee" within Cl. 9 of the same section, such suits being unknown in the Punjab, where the foreclosure takes place under the provisions of Regulation XVII of 1806 in proceedings which are not judicial but ministerial.[23] Similarly, a suit by a mortgagee to recover

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(15) Per Special Bench (Coutts, J., Diss.), in *Ramsumran Prasad* v. *Gobind Das,* 68 I.C. 700=1922 Pat. 615=3 P.L.T. 704, (S.B.)

(16) Also see *Subramaniah Ayyar* v. *Rama Iyer,* 105 I.C. 881=1927 Mad. 1002=54 M.L.J. 67=27 L.W. 489, and *Tika Ram* v. *Salig Ram,* 57 I.C. 494=18 A.L.J. 903.

(17) *Chandra Narayan Singh* v. *Asutosh De,* 23 I.C. 89=41 Cal. 812=18 C.W.N. 659=19 C.L.J. 342.

(18) *Ram Raj Tewari* v. *Girnandan,* 15 All. 63=12 A.W.N. (1892) 240.

(19) *Also see* 3 Agra 5 (Rev.) and 24 W.R. 454.

(20) *Mahomed Ibrahim* v. *Bhymeah Ismalji,* 1 L.B.R. 303.

(21) *Durga Das* v. *Nihalchand,* 110 I.C. 319=1928 Lah. 852.

(22) *Tika Ram* v. *Salig Ram,* 57 I.C. 494=18 A.L.J. 900=2 U.P.L.R. (A.) 216.

(23) *Telu Mal* v. *Lal Singh,* 20 P.R. 1893.

possession of land under his mortgage, falls under S. 7, (v) of the Court-Fees Act, and is within the rules framed under S. 3 of the Suits Valuation Act.[24]

(9) *A suit for redemption of a mortgage* with possession of certain lands,[25] but not a suit praying for cancellation of mortgage deed and possession.[26]

(10) *A suit for separate possession by partition* of joint family property, does not fall under S. 7, (iv) (*b*), but under S. 7 (v) of the Court-Fees Act.[27]

(11) *A suit for specific performance of a contract of sale,* (and for execution of the deed of conveyance), *and to deliver possession of the property*, is in substance one for possession of the property, falling under S. 7, (v) of the Court-Fees Act.[28]

(12) *A suit by grantee of mine for possession against landlord, and subsequent grantee,* is not a suit merely between the tenant, and the landlord, so as to fall under S. 7, (xi) (*e*); nor is it a suit for enforcement of a right of easement, coming under S. 7, (iv) (*e*), of the Act, but plainly a suit for possession of land within the meaning of S. 7 (v) of the Act.[29]

(13) *A suit for possession of Milkiat land, and in addition praying for recovery of certain plots of khudkasht land*, has to be taken as involving two distinct claims, the latter claim falling under S. 7, (v) (*d*) of the Court-Fees Act, and not under S. 7, (v) (*a*) of the Act.[30]

(14) *A suit for partition,* by co-owners of property which is not joint family property;[31] or, a title suit, for possession of property, under the guise of a partition,[32] or where plaintiff is out of possession of property, in which he is claiming a separate share by partition,[33] and where the defendant is adversely holding

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(24) *Ram Kishen* v. *Sayad Brahmin Shah*, 56 P.R. 1892 F.B.) see and cf. *Mahdi* v. *Gajadhur* 73 I.C. 244=1924 Oudh 163; *Compare Hemnath* v. *Wilayat Ahmad*, 1929 Oudh 321. A suit by mortgagee to recover possession of mortgaged property, held to fall under S. 7 (ix) of the Act.

(25) *Puran Singh* v. *Kesar Singh*, 39 P.R. 1907.

(26) *Cf. Koraman Singh* v. *Cockell*, 1 C.W.N. 670.

(27) *Dagdu Sakharam* v. *Totaram Narayan*, 4 I.C. 243=11 Bom. L.R. 1074=33 Bom. 658, *Contra Rangiah Chetty* v. *Subramaniah Chetty*, 8 I.C. 512 =21 M.L.J. 21=1 M.W.N. 755=9 M.L.T. 3 (F.B.).

(28) *Madan Mohan Singh* v. *Gaja Prasad Singh*, 11 I.C. 228=14 C.L.J. 159, followed in *Nathe Khan* v. *Muhammad Khan*, 46 I.C. 534 (P.C.) also see *Gopaldas* v. *Parma Nand*, 60 I.C. 512, but *Cf. Nihal Singh* v. *Sewa Ram*, 35 I.C. 275=38 All. 292=14 A.L.J. 434 [Clause X (*a*) applied].

(29) *Sundar Mal* v. *Munray*, 16 I.C. 963=16 C.L.J. 375.

(30) *Raghubans Narayan Singh* v. *Khub Lal Singh*, 80 I.C. 439=6 P.L.T. 255.

(31) *Shashi Bhusan* v. *Jotindra Nath*, 10 I.C. 463 (Cal.).

(32) *Rachhya Raut* v. *Mt. Chando*, 65 I.C. 294=1923 Pat. 113=3 P.L.T. 293=6 P.L.J. 662; and *Kanhaya Lal* v. *Baldeo Lal*, 1925 Pat. 703= 85 I.C. 538.

(33) *Ahamuddin Tamijuddin* v. *Amiruddin*, 44 I.C. 216 *Cf. Dukhi Singh v. Harihar Shah*, 58 I.C. 236 [S. 7, (iv) (*c*) applied].

the land, and denying the plaintiff's title thereto, would fall under S. 7, (v) of the Court-Fees Act, as a suit for possession of property.[34]

(15) *A suit for possession of land* assessed to revenue, *by setting aside the sale* in favour of the defendant falls under S. 7, (v) (*b*) of the *Court-Fees Act*.[35]

(16) *A suit for possession, and past mesne profits*, is not for two distinct and disconnected claims, but should be taken as one entire claim; in which Court-fee is payable on the aggregate value of both the reliefs.[36] A suit for actual and proprietary possession, of a certain share by ejectment of the defendant, asking for declaration of right with invalidity of sale deed, is a suit for possession and mesne profits falling under S. 7, (v) (*b*) of the Act.[37]

(17) *A suit for possession of an under proprietary tenure* in a permanently settled village, falls under S. 7, (v) (*a*).[38]

(18) *A suit for possession of immoveable property on the basis of a Mokarrari lease*, is a suit for possession, within S. 7, (v) of the Act.[39]

(19) *A suit by a lessee* to obtain possession of land comprised in his lease, is not a suit for specific performance of contract, but falls under S. 7 (v) of the Act.[40]

(20) *A suit by tenant*, for recovery of possession of land, against the admitted landlords, and persons who also claim to be tenants, is governed by S. 7 (v) of the Act.[41] The suit is not covered, however, by paragraphs (*a*) to (*d*) of the sub-section, as their effect is confined to land in respect of which revenue might be paid, which it could not be in respect of the land in suit regarded as lease-hold.[42] A suit for possession by an occupancy tenant against his landlord on the basis of illegal ejectment falls under S. 7, (xi) (*e*), Court-fees Act, only when there is no question of title to be gone into. But when a question of title is involved, the case would fall under S. 7 (v) of the Act, and Court-fee payable would be on the market-value[43] A suit by a

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(34) *Dipchand Rai* v. *Chhetra Lal*, 56 I.C. 570=1 P.L.T. 529.

(35) *Sarju* v. *Sheoraj*, 94 I.C. 179=1926 Oudh 380=13 O.L.J. 124.

(36) *Parameswara Pattar*, 1930 Mad. 833=54 Mad. 1=58 M.L.J. 469 (F.B.).

(37) *Amir Hassan* v. *Hafiz Muhammad*, 128 I.C. 779=1930 A.L.J. 1100.

(38) *Swami Nath* v. *Jang Bahadur Singh*, 58 I.C. 132=7 O.L.J. 403=24 O.C. 29.

(39) *Biri Kulsum* v. *Syed Muhammad Hamid*, 45 I.C. 928 (Pat.).

(40) 5 A.L.J. 534=1908 A.W.N. 201.

(41) *Bhagobai Devi Singh* v. *Shiamlal*, 1933 Nag. 312.

(42) *Ram Ekbal Singh* v. *Baldeo Singh*, 25 I.C. 507 (Cal.) also see *Palanniappa* v. *Stthravelu*, 17 M.L.J. 478, (a suit by a lessee of Melvaram right to recover possession from his landlord and others claiming through the landlord, falls within S. 7, (v), as a suit for possession of land).

(43) *Krishna Chandra* v. *Raja Mahakur*, 94 I.C. 19 (Pat.).

person, alleging that he was a tenant dispossessed by the landlord, against the landlord and a third person who is in possession of the property, is not one between a landlord and his tenant, and Court-fee should be paid according to S. 7 (v).[44]

(21) *A suit for ejectment,* of defendant from *Mahantship* to which 3 *Mukasa* villages are attached, should bear Court-fee calculated under this sub-clause.[45] In a suit under S. 539, Civil Procedure Code, 1882 (—S. 92, Code of 1908), in which the plaintiff merely asked the Court to vest the property in the trustee duly appointed to manage the trust and take it out of the hands of the trustees who had been guilty of mismanagement, it was held by Stanley, C.J., that no change in the beneficial ownership was sought, and "it would be a hardship to impose upon the trust estate the payment of the ordinary Court-fee payable in respect of a hostile suit for recovery of land on title." Burkitt, J., held, that the direction to a trustee who is being removed from the trusteeship to make over the trust property to the new trustee or trustees, is not executable, as if it were a decree for recovery of possession of immoveable property, as such decree is not within the power of the Court, to pass when hearing a suit under S. 539; and that if possession of the property was not surrendered on demand by the *Mutwalli* a regular suit for recovery of possession would be necessary.[46]

(22) *A suit for pre-emption,* on a sale by one co-sharer to her son, will be valued for purposes of Court-fees upon the value the value of the land under S. 7, Cl. (v) (*d*), and on the revenue under Cl. (v), (*h*) unless the suit land is a definite share in an estate paying revenue to Government or is recorded in the Collector's register as separately assessed.[47]

(23) *A suit for pre-emption* of several district plots not constituting any definite fractional shares, of land paying Government revenue, is liable to Court-fee payable on the market-value of the land.[48]

(24) *A suit for pre-emption* of certain plots of land in a *Bhaiyachara* village, amounting to half of a *khata* paying revenue

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(44) *Mt. Bhagobai Devisingh* v. *Shiamlal Dwarkaprasad,* 1933 Nag. 312.

(45) D.C.R. (Centr. Prov.) Part V (2).

(46) *Ekazaffur Husain* v. *Yawar Husain,* 28 All. 112=2 A.L.J. 591=(1905) A.W.N. 208, alss oese *Parsottamanand* v. *Mayanand,* 1932 All. 593, where the case-law is reviewed. In *Rajagopala Naidu* v. *Ramasubramania Ayyar,* the suit to remove trustees praying for possession of the temple and the properties attached thereto, was held to fall under S. 7 (v) as regards temple properties, but temple itself had no market value. This was followed in *U. Pyinnya* v. *Ul Dipa,* 1929 Rang. 134 (F.B.) A suit for possession of trust property falls under S. 7 (v). See *Basawa Singh* v. *Bhagwan Kuar,* 17 I.C. 270; and *Sonachala* v. *Manika* 8 Mad. 516 also see in re *Mahommad Gouse,* 88 I.C. 209=1925 Mad. 804.

(47) *Mt. Jian* v. *Mt. Nadar Nishan,* 6 P.R. 1883.

(48) Reference under Court-Fees Act, 16 All. 493=A.W.N. 1894, 124 referred in 46 P.R. 1908, 6 O.C. 255.

to Government, is liable to Court-fee payable under Clause (*b*), Sub-Section (v) of S. 7 of the Act.[49]

(25) *A suit for partition of Talukdari* estate, held governed under S. 7, (v) (*d*), when there was a difference between the Survey Assessment and that actually payable by the *Taluqdar*.[50]

(26) *A suit for possession of part of estate by subordinate tenure holder*, where the revenue is settled permanently, falls under S. 7, (v) of the Act.[1]

Synopsis.

S. 7 (v) (*a*).

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S. 7 (v) (*b*).

I. Scope of Cl. (b), 325.
II. Suits falling under Cl. (b) 326.

323. **SCOPE AND APPLICABILITY.**—Sub-Clause (*a*) of S. 7 (v) of the Court-fees Act, applies to lands permanently settled, as in Bengal, under the permanent settlement of 1793. Under this system, the amount of revenue payable to Government is fixed and annual. Sub-Clause (*a*) applies in the first place, where the lands, in a suit for possession, form an ENTIRE ESTATE, meaning the whole estate, or a definite area of land having a separate record of right, or a separate assessment. THE "EXPLANATION" to the section defines the expression estate thus:—"The word 'estate' as used in this paragraph, means any land subject to the payment of revenue, for which the proprietor or farmer or raiyat shall have executed a separate engagement to Government or which, in the absence of such engagement, shall have been separately assessed with revenue." This definition covers estates, in respect of which the revenue payable is settled with the Zemindars, or Jagirdars, or where the *Ryotwari* tenure prevails, and the raiyats pay the land-revenue amount directly to Government, or to an assignee of such revenue. *Secondly*, this Sub-Clause (*a*) applies, where the land is A DEFINITE SHARE OF AN ESTATE paying annual revenue to Government.[2] Clause (*a*) will apply only to a suit where the prayer is for possession of a half, one-third, or any other fractional share of the entire estate, and will not apply to a suit for a plot of land in the estate.[3] The whole estate, taken as a unit for land revenue purposes, may be partitioned amongst the owners in certain definite shares, and the amount assessed may be rateably distributed over the separated holdings of different

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(49) *Zaharia* v. *Gopal*, 3 A.L.J. 511=A.W.N. (1906) 195.

(50) *Bevaji Mohan Ji* v. *Punjabi Hanubhai*, 11 Bom. 550, Note=P.J. 1881, P. 177.

(1) *Hubibul Hoosein* v. *Mahomed Reza*, 8 Cal. 192=10 C.L.R. 385.

(2) *Bunniah Lal* v. *Shyamlal*, 12 C.W.N. 990. Also see 3 A.L.J. 511 (A khata in a *Bhyachara Village*).

(3) *Kandasami Goundan* v. *Subbai Goundan*, 77 I.C. 781=1924 Mad. 646=1924 M.W.N. 338=46 M.L.J. 345=34 M.L.T. 92.

owners. Each owner is generally, primarily responsible for payment of land-revenue concerning his own fractional share, without affecting his joint responsibility with all the other owners for the revenue payable to the Government for the estate as a whole. *Thirdly*, lands in suit may form PART OF SUCH AN ESTATE, and be recorded in the Collector's register as SEPARATELY ASSESSED WITH SUCH REVENUE.[4]

324. **SUITS FALLING UNDER Cl. (a).**—(1) SUBORDINATE TENURES.—It was held, by Mitter and Maclean, JJ., in *Habibul Hossein* v. *Mahomed Reza*,[5] that S. 7, (v) (*a*) applies not only to a suit brought by the proprietor himself, but by the *Mokuraridars*, or subordinate tenure-holders of an entire estate, or of land which forms a definite share of an estate paying annual revenue to Government, such revenue being permanently settled. The person who pays the revenue to Government is wholly immaterial for the purpose of determining the Court-fee payable on a claim for land.[6] Again, "what is required as a test for the application of this part of Cl. (*a*) of sub-section (v) is not that the land in suit, or the definite share in dispute should be liable to pay annual revenue to Government, but that it is the estate of which the land in suit forms a part or a definite share that should have a liability to pay the revenue."[7] Accordingly, where the whole of the village formed an under-proprietary tenure, one-third of which was claimed by the plaintiff in the suit, and it was a permanently settled village with the Maharaja of Balrampur, it was held that the Court-fee payable by the plaintiff must be calculated with reference to ten times the revenue so payable.[8]

(2) BAGAYAT LAND.—It was held in *Raghu* v. *Tellapa*,[9] that a suit for possession of Bagayat land, paying revenue to Government, should be valued for purposes of Court-fees under Cl. (*a*), and not under Cl. (*e*) of this paragraph.

(3) LEASE-HOLD PROPERTY.—A suit for possession of immoveable property on the basis of a *Mokarrari* lease, being a suit in respect of a definite share in a revenue-paying estate, was held to be governed by this clause.[10]

(4) OCCUPANCY RIGHTS.—It was held, in some Calcutta cases, that suits for occupancy rights, and rights of ryots holding at fixed rates do not come within the first clause of S. 7 (v) of

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(4) *See* 1881 A.W.N. 5 (a definite share separately assessed) also see *Chandra Narayan Singh* v. *Ashutosh Deo*, 41 Cal. 812=23 I.J. 89=19 C.L.J. 342=18 C.W.N. 659.

(5) 8 Cal. 192=10 C.L.R. 385.

(6) *Swami Nath* v. *Jaug Bahadur Singh*, 58 I.C. 132=7 O.L.J. 403=24 O.C. 29.

(7) *Ibid.*

(8) *Ibid* compare *Bibi Kulsum* v. *Muhammad Hamid*, 45 I.C. 928 (Pat.).

(9) 1884 P.J. 50.

(10) *Bibi Kulsum* v. *Muhd. Hamid*, 45 I.C. 928 (Pat.).

the Court-Fees Act: but this view conflicts with the view of the PATNA HIGH COURT, following *Habibul Hossein* v. *Md. Reza.*[11] The decisions in *Ram Ekbal Singh* v. *Baldeo Singh,*[12] and the two cases quoted in that decision, *Farzand Ali* v. *Mohanth Lal Suri,*[13] and *Ram Raj Tewari* v. *Girnandan Bhagat,*[14] were cited to the contrary, as authority for the proposition that suits for occupancy rights and rights of ryots holding at fixed rates do not come within S. 7, (v) (*a*), of the Act. But Roe, J., preferred to follow *Habibul Hoossein* v. *Mahomed Reza,* where it was held that a Mokaurari lease of a definite share in a revenue paying estate is land within the meaning of this Clause.[15]

325. SCOPE OF CL. (b).—Sub-Cl. (*b*) applies where the revenue is settled, but not permanently. In all other respects it is identical in its scope and applicability with Cl. (*a*), vide §. 323, *ante.* In most of the provinces the system of land-revenue assessments is by periodical settlements, extending over a period of 20 or 30 years. In Northern India the assessment is in respect of estates, with a defined area, having a separate record of rights. In practice each village is taken as a unit for assessment purposes, and constitutes an estate, but several small villages may comprise several small estates, belonging to the same or different owners. The Sir lands in the United Provinces, and the Ryotwari lands in Madras Presidency are subject to periodical revision of land revenue payable to Government, and are temporary settled estates. The land-revenue payable for these periods of the duration of one settlement, is at a fixed annual rate for different estates, or holdings therein which are separately assessed to land-revenue. Under the Government of India Notification No. 1746, dated 4th April, 1889, when a part of an estate paying annual revenue to Government, not permanently settled, is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession, or to enforce a right of preemption in respect of a *fractional share of that part,* shall, for the purpose of computation of the amount of Court-fee payable in the suit, be deemed not to exceed five times the revenue separately assessed on that part as may be rateably payable in respect of the same. The word "*fractional share*" in the Notification cover not only a case where the plaintiff claims a certain fraction of a Survey Number, but also where he claims a certain definite area within the Survey Number.[16]

326. SUITS FALLING UNDER CL. (b).—(1) KHATAS IN A BHAIYACHARA VILLAGE. In a *Bhaiyachara* village, where certain plots of land amounting to half a *Khata* paying revenue to

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(11) *Habibul Hossein v. Mahomed Reza,* 8 Cal. 192=10 C.L.R. 385.

(12) 25 I.C. 507=19 C.L.J. 418.

(13) 32 Cal. 268.

(14) 15 All. 63=(1892) A.W.N. 240.

(15) *Bibi Kulsum* v. *Syed Muhammad Hamid,* 45 I.C. 928 (Pat.).

(16) (16) *Subramania Ayyar* v. *Rama Iyer,* 105 I.C. 881=1927 Mad. 1002 =54 M.L.J. 67=27 L.W. 489.

Government were the subject of a suit for preemption, the Court-fee was held payable under Cl. (v) (*b*) of S. 7, being a *definite* SHARE IN THE ESTATE paying revenue to Government.[17] So also, in a suit by a purchaser for possession of a certain portion of land in a joint khata under a sale-deed which conveyed to him no specific land, the value of the land for possession of which he sues, must be deemed to be five times the revenue payable upon the whole khata, for the purpose of the Court-Fees Act.[18]

(2) RYATWARI LANDS.—A suit for lands not actually registered as *Inam* till after the institution of the suit was rightly treated for purposes of valuation on the same footing that the Government was at the time of suit treating them for purposes of revenue, namely, as *ryotwari lands* held on a *patta,* and the plaintiff could value them at five times the revenue payable thereon under S. 7 (v) (*b*) of the Court-Fees Act. The lands having been classed as fully assessed *ryotwari lands,* at the time of the suit, the Government, or the other defendants who paid such annual revenue to the Government could not be allowed to take the objection that the lands were, as a result of their own act or acts in which they had acquiesced, wrongly classed at the time of suit.[19]

(3) SUIT FOR DECLARATION AND RECOVERY OF POSSESSION.—In a suit for a declaration of right to land and possession OF A DEFINITE SHARE OF AN ESTATE paying an annual revenue to Government, such shares being recorded in Collector's register as separately assessed with such revenue, and such revenue being settled but not permanently, the Court-fee should be charged under this sub-clause.[20] A suit by a Hindu reversioner, to recover possession of property sold by a widow of the deceased owner without legal necessity, though asking for a declaration that the sale-deed is null and void against the reversioners, is always treated as an ordinary suit for possession of property, and Court-fee is paid on five times the Government revenue. It is unecessary for the plaintiffs in the suit to ask for any declaration in respect to the sale-deed, which it is open to them to treat as null and void and as having been carried out but persons without legal power.[21]

(4) SUITS FOR PARTITION OF TALUKDARI ESTATE.—The Court-fee in a suit for the partition of a Talukdari Estate, held under a Temporary Settlement for a period of years, must be calculated under S. 7 (v) (*b*) of the Act.[22]

(5) SUIT FOR POSSESSION BY CANCELLATION OF DEED.—In a suit for possession, "by setting aside the sale," where the main

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(17) *Zaharia* v. *Gopal,* 3 A.L.J. 511=26 A.W.N. 195.

(18) *Ganda Mal* v. *Mt. Mehtabo,* 67 P.R. 1878.

(19) *Narayani Ammal* v. *The Secretary of State and others,* 41 I.C. 167 (Mad.).

(20) *Ishri Dial* v. *Kishen Das,* 1 A.W.N. 5, also see *Ma Shin* v. *Maung Hman,* 79 I.C. 579=1 Rang. 651=1924 Rang 102 (F.N., 12 *post*).

(21) *Tika Ram* v. *Salig Ram,* 57 I.C. 494=18 A.L.J. 903, but compare *Chandan* v. *Bishmi Singh,* 8 A.L.J. 798.

(22) 1881 B.P.J. 177.

relief is that of possession, the Court-fee is payable on five times the Government revenue, and the plaintiff should not be called upon to pay any further Court-fee on the ground that the claim involves a declaratory relief as well. The plaintiff in reality claims only one relief for possession, "and if in order to give him that relief it is necessary to consider along with that the title of the defendant and to declare that title to be ineffective the suit must, still for the purposes of the payment of the Court-fee, be treated as one for possession."[23] Where plaintiff sued for possession of a share in certain lands, on the basis of his proprietory title, asserting that the sale-deed by the widow of plaintiff's brother conveyed no valid title to defendant alienee, and the relief claimed was that on proof of the plaintiff's right of ownership and of possession, and the invalidity of the sale-deed, the plaintiff may be granted actual and proprietary possession of the Zemindary share by ejectment of the defendant, it was held that the suit was a simple suit for possession and mesne profits, and the value of the land was correctly determined under S. 7 (v) (*b*), Court-Fees Act.[24]

(6) ARABLE LAND CONVERTED TO COCOANUT TOPE.—Assessed arable lands held on *patta* for agricultural purposes, on which cocoanut trees are grown instead of an ordinary wet or dry crop, would be valued, for purposes of Court-fees, under S. 7 (v) (*b*) of the Act.[25] In *Venkayya* v. *Ramasami*,[26] Moorse, J., held that a tenant who raised cocoanuts on a wet field must be held merely to have chosen to grow one description of crop, cocoanuts, in lieu of another, paddi or *raggi;* and this view was quoted with approval by Bhashyam Iyengar, J., in *Murugesa Chetti* v. *Chinnathambi*.[27] It was held by the learned Judge that the owner of a betel garden or cocoanut *tope* was engaged in agriculture and not in horticulture, and this view was concurred in by Ayling, J., in *Kullappa Goundan* v. *Abdul Rahim Sahib*.[28]

(7) LAND SEPARATELY ASSESSED TO REVENUE.—When entire holdings, that is, areas separately assessed to revenue, or definite fractional shares of such separately assessed areas, are in dispute, then Court-fees are to be levied under S. 7 (v) (*b*) of the Court-Fees Act, but where field plots or parts of field plots which are not separately assessed are in dispute, then S. 7 (v) (*d*) of the Act applies.[29] It was pointed out in *Mt. Haliman* v. *Mt. Mediya*,[30]

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(23) *Sarju* v. *Sheoraj*, 94 I.C. 179=13 O.L.J. 124=1926 Oudh 380, citing *Haidari Begam* v. *Gulzar Band*, 25 I.C. 395=36 All. 322=12 A. L.J. 481.

(24) *Amir Hassan Khan* v. *Mohammad Nazir Hussain*, 128 I.C. 779.

(25) *Kullappa Goundan* v. *Abdul Rahim Sahib*, 39 I.C. 254=40 Mad. 824=5 L.W. 270=21 M.L.J. 251.

(26) 22 Mad. 39=8 M.L.J. 278.

(27) 24 Mad. 421.

(28) 39 I.C. 254=40 Mad. 824=5 L.W. 270=21 M.L.J. 251.

(29) *Ma Shin* v. *Maung Hman*, 79 I.C. 579=1 Rang. 651=1924 Rang.

(30) 1933 All. 414=1933 A.L.J. 398.

that the unit of land for the purpose of the assessment of revenue is a Mahal, and a separate engagement is demanded from the lambardars or proprietors of every Mahal in respect of the revenue assessed upon the Mahal. Accordingly, a *Khewat Khata* though recorded as separately assessed with revenue cannot be held to be an "Estate" within the meaning of this clause for the reason that no separate engagement has been executed in respect of each *Khewat Khata* between the Government and the Proprietors in respect of the revenue assessed upon the Khewat Khata. Further, it has been held that *Khewat Khata* is not a "definite share of an estate", as it is not a definite share of the Mahal. It is merely a part of the Mahal, but not a fractional share or definite share of the mahal, although it is assessed with a definite share of the revenue assessed upon the mahal. A suit for possession of an entire *Khewat Khata*, which is a part of an estate, and is recorded as separately assessed with revenue would be liable to Court-fee *ad valorem* under S. 7 (v) (6) upon five times the revenue assessed upon the Khata, but where the suit is for fractional shares of *Khewat Khatas*, not recorded as separately assessed with revenue, S. 7 (v) (*b*) does not apply, but S. 7 (v) (*d*) would be applicable.[31]

Section 7 (v) (c).

Synopsis.

I. Scope, and applicability. II. Illustrative cases.

327. **(I) SCOPE, AND APPLICABILITY.**—This sub-clause applies to land which pays (1) no revenue, either permanently or temporarily settled thereon: or (2) is partially exempted from revenue, or (3), is charged with a fixed payment in lieu of revenue. For example a MANYAM is land held free from revenue, or at a nominal assessment, in consideration of services done to the state or the community. They are of different kinds in the Madras Presidency known by the name of *Sarvamanyam, Sudda Inam, Ardhamanyam, Chaturbhagam, Mukhasa, Duftar Inams, Tope Inams, Brahmadayam, Agraharam, Stotriyam, Poruppu, Jagir*, etc.[32] The PARAMBA lands in Malabar District are free from land revenue if they contain no cocoanut, areca or Jack trees. The assessment is charged in respect of trees which grow in parambas, and "in fact in Malabar a tree tax is substituted for the land assessment, and whether or not a paramba is assessed depends upon the nature of the trees grown therein.[33] "The parambas should either be classed as lands paying no revenue, or as gardens.[34] It was observed in *Abdul Rahim Sahib* v. *Kullappa Gownden*,[35] that whether or not a Paramba sued a is to be regarded as a garden, or as land which pays no revenue, is a question of fact which must be decided in each case. "A few

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(31) *Ibid.*

(32) Satyamurthi's Court-Fees Act, p. 127.

(33) *Andathadan* v. *Pallamboth*, 12 Mad. 301 (F.B.).

(34) *Ibid.*

(35) 30 I.C. 485=18 M.L.T. 243.

isolated trees on a piece of land will not make it a garden; but where a number of trees are planted on a particular piece of land which is well defined and can be marked off from the rest of the land, it is difficult to see why that particular plot should not be treated as a garden if the land is used for the cultivation of flowers, fruits or vegetables.'' On Letters Patent Appeal, it was held by Ayling, J., that the proper principle of valuation of a suit for purposes of jurisdiction could not be made dependent on such an uncertain factor as the comparative density of the trees. But, as pointed out by the Full Bench in *Andothodan* v. *Pullam-both Mamally*,[36] there is much significance in the juxtaposition of the words ''house or garden'' in S. 7 (v) (*e*), and it should be taken as referring primarily to a garden in the English sense, ornamental or pleasure, or vegetable.[47]

328. (II) ILLUSTRATIVE CASES—REVENUE-FREE LANDS.—In a suit for possession of land which pays revenue, if profits have accrued from the land for the year next prior to suit, the value to be put on the property, for purposes of Court-fees is 15 times the nett profits which have arisen from the land during the year next before the date of presenting the plaint.[38] The expression ''*year next prior to suit,*'' has been held to mean 365 days calculated backwards from the date of plaint.[39] The nett profits would be calculated by taking the entire value of the produce of land, and deducting therefrom the expenses incurred in connection with cultivation. In a suit for possession of land which pays no revenue, and has produced no profits during the year next before the date of presenting the plaint, the value of the subject-matter must be deemed to be ''the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood.''[40] This value means market value by reference to the value of adjacent property taken intrinsically. A land which is religious land, and pays no revenue, is not incapable of valuation merely because of the accidental, and not essential difference of ownership from other privately owned lands in the neighbourhood, similarly situated.[41] A suit for possession of *Inam* lands, bearing a fixed quit-rent would come within the definition of S. 7 (v) (*c*), of the Act, but where the lands in suit were not actually registered as *Inam* till after the institution of the suit, the plaintiff was held entitled to treat the lands for purposes of valuation on the same footing

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(16) 12 Mad. 301, (F.B.), *supra.*

(37) *Kullappa Goundan* v. *Abdul Rahim Sahib*, 39 I.C. 254=5 L.W. 270=21 M.L.T. 251.

(38) *Ghasi Ram* v. *Har Gobind*, 28 All. 411=1906 A.W.N. 66=3 A.L.J. 244, also see *Bhagwan Puri* v. *Secretary of State*, 40 All. 398=100 I.C. 35=1927 All. 308. (It was held that plaintiff's estimate of value of land in dispute cannot be allowed if contrary to the provisions of the Act, and prejudicial to the defendant).

(39) 28 All. 411=1906 A.W.N. 66=3 A.L.J. 244, *supra.*

(40) *Maung Meik* v. *Kumara*, 60 I.C. 5=3 U.B.R. 236, also see *Chandra Narain Singh* v. *Asutosh De*, 23 I.C. 89=19 C.L.J. 342=18 C.W.N. 659.

(41) *Maung Meik* v. *Kumara*, 60 I.C. 5=3 U.B.R. (1920) 236, *supra.*

that the Government was at the time of plaintiff's suit treating them for purposes of revenue, namely, as *ryotwari* lands held on *patta*, and to value them at five times the revenue payable thereon under S. 7 (v) (*b*).[42]

329. **LANDS WITH FLUCTUATING ASSESSMENTS.**—The system followed in the case of fluctuating assessments is to make an assessment upon the crops of each harvest, and fix the revenue according to the rates previously determined.[43] Section 7, Cl. (v) (*b*) cannot apply in the case of fluctuating assessment, where no annual revenue payable to Government is settled, and the assessment is on each harvest according to the crops. It is obvious that such land may pay revenue once a year, twice a year, or even thrice, or perhaps not at all.[44] The words, "where the land pays no *such* revenue" must be construed either as "annual revenue payable to Government, or, more fully, as annual revenue payable to Government on an entire estate or a definite share or part of an estate fixed permanently or not permanently."[45] There is no justification for holding that the words "where land pays no such revenue" refer only to the case of lands totally exempted from the payment of revenue, otherwise, the word "*such*" would be meaningless.[46] The case of lands subject to fluctuating assessment is, therefore, governed by sub-Cl. (*c*) of S. 7 (v) of the Court-Fees Act.

Section 7 (v) (d).

Synopsis.

I. Scope and applicability.
Comparison of Cls. (a), (b), (c) and (d) of S. 7 (v).
Cases falling under this clause.
Fractional share of part of estate
II. Market-value.
III. Proviso—Its scope and object.
(A) Bombay proviso.
(B) Madras proviso.

330. **(I) SCOPE AND APPLICABILITY; COMPARISON OF CL. (a), (b), (c) AND (d) OF S. 7 (v).**—It has been pointed out in *Chandra Narain Singh* v. *Asutosh De*,[47] that sub-Cl. (*a*) lays down that where the subject-matter is land which forms an entire estate or a definite share of an estate, paying annual revenue to Government or which forms part of such an estate and is recorded in the Collector's register as separately assessed with such revenue, and such revenue is permanently settled, the value of the subject-matter shall be deemed to be ten

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(42) *Narayani Ammal* v. *Secretary of State*, 41 I.C. 167, also see P.J. 1889, p. 241.

(43) *Mabra Singh* v. *Bahadur Singh*, 50 I.C. 142=100 P.R. 1919.

(44) *Ibid.*

(45) *Ibid.*

(46) *Ibid.*

(44) 23 I.C. 89=41 Cal. 812.

times the revenue payable. Sub-Cl. (*b*) treats of a case similar in all respects with that comprised in sub-Cl. (*a*), with this difference that the revenue payable in respect of the estate is not permanently settled. Sub-Cl. (*c*) lays down that where the land pays no such revenue or has been partially exempted from such payment or is charged with any fixed payment in lieu of such revenue and nett profits have arisen from the land during the year next before the date of presentation of the plaint, the value of the subject-matter shall be deemed to be fifteen times such nett profits; but where no such nett profits have arisen therefrom, the value of the subject-matter shall be the amount at which the Court shall estimate the land with reference to the value of the similar land in the neighbourhood. Sub-Cl. (*d*) provides that where the land forms part of an estate paying revenue to Government but is not a definite share of such estate, and is not separately assessed as mentioned in sub-Cl. (*a*) the value of the subject-matter shall be deemed to be the market-value of the land. The word "estate" has been explained to mean any land subject to the payment of revenue, for which the proprietor, or farmer, or *raiyat*, shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue. Thus, both Cls. (*a*) and (*b*), refer to lands forming an estate paying revenue to Government, or a definite share of an estate, or separately assessed lands; and, Cl. (*c*) refers to lands whole or partially exempt from such payment; while sub-Cl. (*d*) applies where the land forms part of an estate paying revenue to Government, but is not a definite share of an estate, or is not separately assessed; and, in such cases it is provided that Court-fees are payable on the market-value. The rule as to payment of fee on five times the revenue under S. 7 (v) (*b*) is limited to cases where the suit relates to the entire *Mahal* or part separately assessed, or a fractional share of it; but in a suit for *distinct plots*, which are not a fractional part nor separately assessed, the fee is payable on the market-value, under S. 7 (v) (*d*) of the Act.[48] The words "SEPARATELY ASSESSED", mean separately assessed in respect of the particular bit of land, as distinct from something which is assessed as part of a whole, and not where the particular bit of land can be shown as liable to a portion of revenue noted in respect of a whole area by a process of a mathematical calculation at the rate charged per acre.[49] By the words "DEFINITE SHARE" of an estate, is meant an undivided tangible fraction of an estate as distinct from a defined demarcated plot which has been taken out of an estate."[50]

331. **CASES FALLING UNDER THIS CLAUSE.**—The Court-fee payable in respect of a suit for recovery of land form-

(48) 16 All. 493—per Burkitt, J., also see.

(49) *Godavarthy Sundaramma* v. *Mangamma*, 47 I.C. 543=8 L.W. 88 =34 M.L.J. 558.

(50) *Godavarti Mangamma* v. *Sundaramma*, 33 I.C. 683; and 47 I.C. 543=8 L.W. 88=34 M.L.J. 558 ("definite share" indicates a fractional share in the whole estate,) and not a share in the estate defined by boundaries.

ing part of an entire area, but neither sub-divided nor separately assessed to land-revenue, must be computed on the market-value of the land sued for under S. 7 (v) (*d*) of the Act.[1] Similarly, a suit by one *ryot* against another *ryot* for possession of a plot of land forming part of a Zamindary Estate is governed by sub-Cl. (*d*) of S. 7 (v) of the Act.[2] In *Chandra Narayan Singh* v. *Asutosh de*[3], where the suit was for possession of five *Ghatwali Mehals*, found included in an aggregate of 52 *Ghatwali Mehals* belonging to a proprietor, for which a certain sum of money was payable annually as *Sadr Jama*, but no apportionment of this sum was made between the several mehals, it was held that the land in suit formed part of an estate paying revenue to Government, but did not constitute a definite share of such estate, nor was it separately assessed with revenue; and, consequently sub-Cl. (*d*) of *S*. 7 (v), was applicable to the case, and the Court-fee payable was according to the market-value of the land. THE PUNJAB CHIEF COURT had held in *Haider Ali* v. *Sondha*,[4] that "there is no provision in the Court-Fees Act for the value of a fractional part of a holding recorded in the Collector's register as separately assessed with land revenue, being calculated on the land revenue, and the market-value must therefore be taken, under S. 7 (v) (*d*) of the Act." This view was followed in a later case of *Mt. Jain* v. *Mt. Nadir Nishan*,[5] where it was held that "unless the land in suit is a definite share in an estate paying revenue to Government, or is recorded in the Collector's register as separately assessed, the stamp must be calculated upon the value of the land, under S. 7 (v) (*d*) of the Act, and not on the revenue under Cl. v (*b*) of the same section.[6] In *Ragwant Singh* v. *Mutalli*, the LAHORE HIGH COURT has held that S. 7 (v) (*b*) does not govern the case of a land assessed to land revenue, where the suit is for a share in a specific plot, not separately assessed to land revenue, but that S. 7 (v) (*d*) applies, and the Court-fee is payable on the market-value of the land. A suit for possession of colony lands, has to be valued for Court-fees and jurisdiction at the market-value of the land.[7] The ALLAHABAD HIGH COURT, held in *Chandan* v. *Bishan Singh*,[8] that where practically two-thirds of a certain Zemindary *Khata* was sold by a Hindu widow in possession thereof, specifying in the sale-deed the actual plots which she transferred, but the lady had not sold a fractional two-thirds share in the whole estate, *i.e.*, in each and every plot, with liability to pay two-thirds of the revenue, and it was not possible to say what was the actual revenue on the specified plots sold by her, the Court-fee must be calculated, on the market-value, under

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(1) 47 I.C. 543=34 M.L.J. 558=8 L.W. 88, *supra*.

(2) *Kandaswamy Goundan* v. *Subbai Goundan*, 77 I.C. 781=1924 Mad. 646=46 M.L.J. 345.

(3) 23 I.C. 89=41 Cal. 812.

(4) 102 P.R. 1880.

(5) 6 P.R. 1883.

(6) 116 I.C. 209=1930 Lah. 182.

(7) *Wasawaram* v. *Bahadur Chand*, 25 I.C. 24.

(8) 33 All. 630=8 A.L.J. 798=11 I.C. 816.

S. 7 (v) (*d*), of the Act, as the land was part of an estate paying revenue, but was not a definite fractional share of such an estate. The RANGOON HIGH COURT, held in *Ma sha Ma* v. *L. S. M. Samasundaram Chetty*,[9] that where the property in dispute is not an entire holding, or a definite share, or fractional part of a holding separately assessed to revenue, but consists of individual field plots which form part of a holding but which are not separately assessed, the Court-fees are payable under S. 7 (v) (*d*), and not under S. 7 (v) (*b*) of the Act. The PATNA HIGH COURT has held that a claim in respect only of the *Khudkasht* lands would fall under S. 7 (v) (*d*) of the Act, but the claim for possession of *Malkiat* does not include a claim for possession of the *Khudkasht*,[10] It has also held that the *Kanjora Ghatwali* though a part of an estate paying revenue to Government is not definite share of such an estate, and is not separately assessed to Government revenue, and therefore the Court-fee had to be calculated on the market-value of the land.[11]

332. FRACTIONAL SHARE OF PART OF ESTATE.— By virtue of the Government of India Notification No. 4650, dated the 10th September, 1889, where the subject-matter of the suit is a fractional part of a part of an estate, which is separately assessed to land revenue, the Court-fee is payable on the value assessed at five times such portion of the revenue separately assessed in that part, as may be rateably payable in respect of that share. The expression "*fractional share*" occurs also in the Notification No. G. 358, dated 15th September, 1921, issued by the Government of Madras, under powers granted by the Devolution Act. The question has arisen whether the expressions "*fractional share,*" used in respect of *part* of an estate separately assessed to revenue, means something different from the "*definite share*" used in respect of an entire estate. The point has been fully considered in *Subramania Ayyar* v. *Rama Ayyar*,[12] where there were a number of items not separately assessed to revenue, and these were all portions of survey numbers which had been separately assessed. In respect of this the plaintiff relied on Notification No. 4650, dated 10th September, 1889 issued by the Government of India, now superseded and re-enacted by Notification No. 358,

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(9) 75 I.C. 217=1923 Rang. 246. *Cf. Ma Shin* v. *Maung Hman*, 79 I.C. 579=1923 Rang. 102. (*Held* that when entire holdings, that is, areas separately assessed to revenue, or definite fractional shares of such separately assessed areas, are in dispute, then Court-fees are to be levied under S. 7 (v) (*b*) of the Act, but where field plots or parts of field plots which are not separately assessed are in dispute, then S. 7 (v) (*d*) of the Act applies.

(10) *Raghubans Narayan Singh* v. *Khubkal Singh*, 80 I.C. 439.

(11) *Jogendra Narain Singh* v. *Radha Prasad Singh*, 1932 Pat. 319= 140 I.C. 817=13 P.L.T. 590.

(12) 1927 Mad. 1002=105 I.C. 881=54 M.L.J. 67. (Not followed in *Sh. Salamat Ali* v. *Nur Mohd Khair*, 1933 Oudh 533. *Held*, that in a suit for pre-emption in respect of separate plot of land which does not constitute any definite fraction of a distinct revenue paying area and is not separately assessed to revenue, the Court-fee should be paid on this market-value of land in suit, and not, as is the case where the suit is for a definite fractional share, or five times the Government revenue).

dated 10th September, 1921. The ALLAHABAD HIGH COURT, had held in 16 All. 493=(1894) A.W.N. 124, that a fractional share under the Notification covers only a case where the plaintiff claims a certain fraction of a survey number, but not where he claims a certain definite area within the survey number, for instance, if the plaintiff claims ½ or 1|3 or ¼ share of a survey-number assessed with revenue, the notification applies, but where he claims three acres 70 cents. out of a survey-number whose extent is seven acres 30 cents the notification does not apply, though three acres 70 cents is 37|73 of seven acres 30 cents. The Allahabad view has all along been followed in Oudh.[13] In *Godavarty Sundaramma* v. *Mangamma*,[14] Coutts-Trotter, J., makes no reference to this notification, but refers to the Allahabad decision in 16 All. 493, where this notification is considered, and agrees with Burkitt, J., saying, however, that the result was very anomalous. He was of opinion that a "fractional share" cannot cover a case where the plaintiff claims a definite extent out of a larger servey number separately assessed. The Letters Patent Appeal was dismissed on finding that the portion was not separately assessed. These views were followed by Krishnan, J., in *Kundasami* v. *Subbai*,[15] where a land definite in extent was held not to satisfy the requirements of the section. The words "definite share" were held to indicate a fractional share in the whole estate and not a share in the estate defined by boundaries. This opinion is supported by reference to the decision in *Godavarthy Sundaramma* v. *Mangamma*,[16] followed in two unreported cases, *viz.*, S.A. No. 886 of 1917 and 711 of 1915. But Ramesam, J., observes in commenting upon all these cases, that "in so far as all these decisions lay down that under the Act itself a plaintiff suing for the possession of a part of a survey number should pay Court-fees on the market-value, I agree with them. But the object of the notification is to give relief from the anomalous position, and where the notification has not been considered the decisions are of no value." He adds that the Act uses the words "definite share," but the notification uses the words "fractional shares", which is not confined to a simple fraction like ½, 1|3, ¼, but can cover any kind of a complicated fraction like 19|48 or 37|72, etc., as one may get in Mahomedan Law Cases. He argues that the Court-Fees Act in a fiscal enactment, and the anomaly may be avoided by a fairly reasonable construction. The words "fractional share" may therefore cover both a definite fraction and also an indefinite fraction, and there seems no reason to limit the words "fractional share" to unspecified ½ or ¼, and in the result he differs from Burkitt, J., and Tudball, J., in the Allahabad cases. As to Madras cases he is of opinion that no Division Bench has ever considered the

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(13) *Sh. Salamat Ali* v. *Nur Mohammad Kair*, 1933 Oudh 533.

(14) 47 I.C. 543=8 M.L.W. 88=34 M.L.J. 588.

(15) 77 I.C. 781=46 M.L.J. 345=1924 Mad. 646=34 M.L.T. 92 =1924 M.W.N. 338.

(16) 47 I.C. 543=8 M.L.W. 88=34 M.L.J. 558.

Notification, and consequently he held that the fee need not be paid on the items in suit on the basis of their market-value. This decision by Ramesam, J., has been criticised most minutely by Mr. Satyamurthi, in his work on Court-Fees Act, on pp. 133-136, and it would seem that the reasoning on which this conflicting ruling is based is not very sound or convincing. In any case, unless a Full Bench of the Madras High Court adopts this view, and overrules all other decisions by the Division or Single Benches, the weight of authority is certainly opposed to this latest pronouncement on the construction of the terms "fractional shares" in the Notifications. The Court-fee payable in cases governed by the Notification cannot exceed 5 times the assessment leviable on the fractional share, but in view of the provision as to 10 times the assessment in the Madras Court-fees Amendment Act, an amendment of the Notification would be conducive to the removal of an obvious anomaly.

333. MARKET-VALUE.—The expression "*Market-value*" in S. 7 (v) (*d*) of the Court-Fees Act, means the market-value of the subject-matter of the suit, and where the plaintiff sued for possession as usufructuary mortgagee, the valuation is to be on the amount of the mortgage-money, on payment of which the mortgagee interest in the property can be redeemed at any time.[17] On the same reasoning, it was held that in a suit for ejectment of a tenant the subject-matter is the value of the tenant's interest which was in dispute.[18] The market-value intended in S. 7 (v) (*d*) of the Act, is the market-value at the time of the suit, in ordinary suits for possession of the property. But suits for pre-emption stand on a different footing and it has been held in *Sher Muhammad* v. *Ahmad Said*,[19] that where in a pre-emption suit Court-fee is to be paid on the market-value of the property sold, the value of the suit should be determined with reference to what the value was on the date of the sale and not on the date of the institution of the suit.

334. PROVISO: ITS SCOPE AND OBJECT—(A) Bombay.—The construction and applicability of S. 7 (v) of the Act to a suit for lands in a *talukdari* village has been considered by the Full Bench of Bombay High Court, in *Ala Chela* v. *Oghadbhai Thakersi*.[20] West, and Nanabhai, JJ.; held that the proviso to Art. (v) of S. 7 of the Act "was intended to provide a standard of valuation of the Bombay Presidency, not only for the comparatively rare case of land forming part, but not a definite share, of an estate paying revenue to Government, but for all classes of suits for land. The proviso extends far more widely than Cl. (*d*). It provides rules for all the cases embraced in the preceding Cls. (*a*), (*b*) and (*c*), and is manifestly intended

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(17) *Mahdi* v. *Gojadhar*, 73 I.C. 244=90 A.L.R. 85.

(18) *Ramraj Tewari* v. *Gimandan Bhagat*, 15 All. 63=(1892) A.W.N. 240; and *Radha Prasad Singh* v. *Pathan Ojah*, 15 All. 363=(1893) A.W.N. 148.

(19) 69 I.C. 650.

(20) 11 Bom. 541 (F.B.).

to furnish rules for all these cases based on the particular circumstances of the Bombay Presidency.'' ''The primary sense of assessment is the imposition on the land of such and such a tax; its second intention is the tax itself, and there is in the section a transition from the one sense to the other. The theory being that all land is primarily liable to be rated or taxed for the public revenue, any sum not levied according to the appraisement made in order to show the proper amount of the land-tax may be regarded as a remission.'' Accordingly, in the case of a *talukdari* village, the proprietor of which had, under a settlement with Government for a period of 22 years, agreed to pay a fixed annual *Jama*, or lump assessment, instead of the full survey assessment for the whole village, it was held by majority of the Full Bench, that the difference in amount between the *Jama* and the full survey-assessment was a remission, and, therefore, a suit for possession of lands in this village was to be valued according to Cl. 3 of the proviso to Art. (v) of S. 7 of the Court-Fees Act. Birdwood, J., differed; he held that no part of the proviso applied to a suit for the possession of lands in a *Talukdari* village and that such a suit should be valued according to sub-Cl. (*d*) of S. 7 (v) of the Act. The three clauses of the proviso seem to apply only to land which have been subjected to a survey settlement as ordinarily understood and legally provided for in the Bombay Presidency; the first clause being applicable to land settled for a period not exceeding thirty years, the second to lands settled for a longer period or permanently, and the third to *Inam* lands on which the whole or a part of the survey assessment has been expressly remitted—per Birdwood, J., relying on *Bavaji Mohanji* v. *Pemjabhai Hambhai*, 1881 P.J. 177=11 Bom. 550, notes.

335. Madras.—The Madras Court-Fees Act V of 1922 enacts a proviso in substitution for the proviso in the Act which relates to the Bombay Presidency. Under S. 8 of the Suits Valuation Act, suits covered by S. 7 (v) are amongst the excepted cases in which the valuation for purposes of the computation of Court-fees and jurisdiction need not be the same. Section 3 of the Suits Valuation Act enables the Local Governments to frame rules for valuation of those classes of suits which have been excepted in S. 8 of the Act. No rules have, however, been framed by the Government of Madras under S. 3 of the Suits Valuation Act, and under S. 14 of the Madras Civil Courts Act, ''when the subject-matter of any suit or proceeding is land, a house or garden, its value shall for the purposes of the jurisdiction conferred by this Act be fixed in the manner provided by the Court-Fees Act, S. 7, Cl. (v).'' Accordingly, in the case of suits falling under S. 7 (v) of the Court-Fees Act, the value for jurisdiction is at present the same as the value for purposes of Court-fee. The present proviso introduced into the section by the Madras Amendment of 1922 is to the effect that if rules are framed by the Local Government under S. 3 of the Suits Valuation Act, for determining jurisdiction, the value is to govern the valuation for Court-fees Also. The Madras Proviso, however refers only to ''land,'' and is put under Cl. (v) (*d*), preceding

Cl. (v) (*e*) which relates to suits where the subject-matter is a house, or garden. This proviso is therefore not applicable to class of suits falling under S. 7 (v) (*e*) of the Act.

Section 7 (v) (e).

Synopsis.

I. Scope and applicability.
II. Houses: (i) definition, (ii) Building sites.
III. Gardens.
IV. Valuation—for Court-fees and Jurisdiction.
V. Valuation—Course of Appeal.

336. SCOPE AND APPLICABILITY.—This sub-clause provides for the valuation of a suit for possession of a house or garden, "according to the market-value of the house or garden," which is the subject-matter of the suit. If the principal relief is one for possession, and there is an ancillary relief by way of declaration, in that case it is enough to pay the Court-fee on the relief for possession.[21] A suit for possession of immoveable property and past mesne profits, should be taken as one entire claim, for the computation of the Court-fee, and not as "distinct subjects" under S. 17 of the Court-Fees Act. Accordingly Court-fee may be paid on the aggregate value of the reliefs, *viz.*, the claim for possession and claim for mesne profits.[22]

337. HOUSES.—(1) DEFINITION: The expression "houses" appearing in S. 7, (1) (*e*), Court-Fees Act has been left undefined. It was observed by Wild, J.C., in *Sirdar Mahomed Tembar* v. *Pir Bux*,[23] "that in its more restricted meaning it is usual to speak of a house as a building for the residence of human beings or animals or for the storing of goods: *cf.* store-house, ware-house. But in its wider meaning it is not unusual to speak of a house as including the compound which surrounds it. In fact in the case of better class of residential houses it is necessary that there should be a compound which will contain such things as out-houses, fowl-houses, servant's quarters, and water pipes. All these amenities which are necessary for the beneficial enjoyment of a house can be spoken of as being part of the house itself." A house thus includes the whole site and the compound which surrounds the house with various .outbuildings. In the same case Rupchand A.J.C. observed that "ordinarily it (house) means a building used as a dwelling place, and includes the land on which such building is erected. But it has also an extended meaning, and includes within its ambit land used for certain purposes other than as a dwelling place, whether such land is built or not." He added that "the Court-Fees Act is an antiquated Act, and is deficient in several particulars", and suggested that "it is certainly desirable that the provisions of this clause should be made more explicit by expressly providing that in the case of lands, whether built upon

(21) *Mt. Shabar Bano Begam* v. *Raj Baladur Singh*, 1933 Oudh 545.

(22) *Kishori Lal Roy* v. *Sarat Chunder Mosumdar*, 8 Cal. 593=10 C.L.R. 359; (F.B.), followed in *Parameswara Pattar*, 1930 Mad. 833; (F.B.), also see 16 All. 401=1894 A.W.N. 124.

(23) 130 I.C. 550=1931 Sind 6.

or not, which have a market-value, Court-fee should be paid on such value.''[24] It was held in *Durga Singh* v. *Bishashar Dayal*[25] that the word ''house'' as used in the Court-Fees Act is sufficiently comprehensive so as to include an INDIGO FACTORY. Where the substantial subject-matter of a suit for preemption was not the site of the factory, but the factory itself, it was held that ''substantial and permanent buildings, such as constitute a factory, clearly come within the meaning of the expression houses.'' It was observed that the word ''land'' in its wider signification would no doubt include not only the surface of the ground, but also everything on or under it, for *cujus set solem ejus est usque ad coelum*. But the word ''land'' appears to be used in S. 7 of the Court-Fees Act in contradistinction to ''houses or gardens''. In *Rajagopala Naidu* v. *Ramasubramania Ayyar*,[26] in a suit by the plaintiff claiming to be a trustee of a TEMPLE against the defendant who was in possession of the *Devastanams*, Spencer, J., was of opinion that ''if a plaintiff sets up any proprietary right over temple properties, he must pay Court-fee valuing his relief of possession upon the value of the temple properties.'' But, ''that if a plaintiff claims no higher right than that of administering endowed properties he should not be made to pay Court-fees on the same footing as a plaintiff who sues for possession claiming rights as a proprietor.''[27] The other learned Judge, Venkatasubba Rao, J., was of opinion that a temple being *extra commercian* is *ex hypothesi* incapable of having a market-value, and that the structures constituting a temple, which are the abodes of the idols are not ''houses'', under S. 7 (v) (*e*) of the Act.[28] On a reference of the question of Court-fee, the Full Bench held, that even if the temple was a ''house'' within the meaning of S. 7 (v) (*e*),—a question which did not arise definitely for decision—it was clear that it had no ''market-value'' as a temple at the time, as the property was devoted in perpetuity to religious purposes and was inalienable. Accordingly, it had to be dealt with as a matter ''not otherwise provided for'' under Sch. II (17), ''except that, apparently, there was in this case some market-value for some part of the property claimed and in respect of that the plaintiff had put a valuation.''[29] In a suit for possession of A MONASTERY, Court-fee was held payable *ad valorem* on the value of the property sought to be recovered from the defendant, on the basis of a decision by the Monastic Authorities.[30]

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(24) *Sirdar Mahomed Tebar* v. *Pir Bux*, 130 I.C. 550 (552)=1931 Sind 6.

(25) 24 All. 218 at pp. 225, 226.

(26) 74 I.C. 198=1924 Mad. 19=46 Mad. 782 (789, 790)=45 M.L.J. 274=1923 M.W.N. 550=18 L.W. 326=33 M.L.T. 21.

(27) *Ibid.* 74 I.C. 198 (199)=46 Mad. 782 (789)=1924 Mad. 19.

(28) *Ibid.* 74 I.C. 198 (200)=46 Mad. 782 (789, 790)=1924 Mad. 19.

(29) *Ibid.* 74 I.C. 198 (201)=46 Mad. 782 (790)=1924 Mad. 19 *etc.*

(30) *U Thi Ha* v. *U Thudattama*, 4 I.C. 815, U.B.R. 1909, II. Buddhist Law Eccl. p. 5.

(2) BUILDING SITES. In a suit for recovery of certain land after removing the building, illegally erected thereon, by the defendant, the value of the land alone has to be taken into account, and not the value of the building.[31] But, where the suit is for recovery of the site with the buildings standing thereon, then the structures on the site have to be necessarily valued for purposes of Court-fee.[32] It has been held by the Sind Judicial Commissioner's Court, that the expression 'houses' in its wider significance, includes the whole site and the compound which surrounds the house with various out-buildings, and that land granted as a building site or as a matter of that unbuilt and unenclosed land in a city used as a market or as a meeting place for merchants and brokers for effecting mercantile transactions, has to be taken at its market-value when it forms the subject-matter of a suit for possession.[33]

338. **GARDENS**.—(1) It was held by a Full Bench of the MADRAS HIGH COURT, in *Audathodam* v. *Pallambath*,[34] that the word "garden" used in the clause in juxtaposition with the word "house", indicates that it means primarily an ornamental, or pleasure, or vegetable garden. It was observed that it was a question of fact in each particular case whether a *paramba* in Malabar Districts was a garden or not. This authority was referred to and explained in *Abdul Rahim Sahib* v. *Kullappa Gownden*,[35] where it was held "that a few isolated trees on a piece of land will not make it a garden; but where a number of trees are planted on a particular piece of land which is well-defined and can be marked off from the rest of the land, it is difficult to see why that particular plot should not be treated as a garden if the land is used for the cultivation of flowers, fruits or vegetables."[36] On Letters Patent Appeal, it was held that the expression "*garden*", used in juxtaposition to "house", should be taken as referring to a garden in the English sense, as held by the Madras Full Bench Ruling, but that the growing of cocoanut trees on a portion of the assessed arable lands, amounted merely to raising of a different crop, instead of the ordinary crops which did not affect the application of S. 7 (v) (*b*) of the Act, and, consequently, the piece of ground on which cocoanut trees had grown was not a "garden" within the meaning of the expression as used in S. 7 (v) (*e*) of the Act.[37] (1) It was held in *Abdul Rahim Sahib* v. *Kullappa Gownden*,[38] that ASSESSMENT IS NOT THE CRITERION in determining the question whether a land is garden or not. "Assessed or unassessed it will

(31) *Ramaswami* v. *Gundappa*, 7. M.L.J. 49, also see *Namasivaya* v. *Subramania*, 24 M.L.J. 37.

(32) *Nihal Chand* v. *Uday Ram*, 1886 A.W.N. 106.

(33) *Sirdar Mahomed Taar* v. *Pir Bux*, 130 I.C. 550 (551)=1931 Sind 6.

(34) 12 Mad. 301 (F.B.).

(35) 30 I.C. 845 (847)=18 M.L.T. 243.

(36) 30 I.C. 845 (847)=18 M.L.T. 243, *supra*.

(37) *Kullappa Gownden* v. *Abdul Aahim Sahib*, 39 I.C. 254 (25)=5 L.W. 270=21 M.L.T. 251.

(38) 30 I.C. 845 (847)=18 M.L.T. 243.

fall under Cl. (v) (*e*), if it can be defined as a garden.'' Similarly, it was held, by the Punjab Chief Court, in *Siri Dhar* v. *Amar Nath*,[39] that the term ''garden'' in S. 7, (v) (*e*), of the Court-Fees Act extends to ''fruit garden'' even though land is assessed to revenue, and that applying R. 1, (*e*), framed under S. 3 (1) of the Suits Valuation Act, the value of a suit for possession of a fruit garden, surrounded by a wall, the land being assessed to revenue, is not 30 times the Government revenue, but the market-value of the ''garden''. This has been relied on, by the LAHORE HIGH COURT in *Beharilal* v. *Nand Lal*,[40] and *Mt. Bhag Bhari* v. *Jawahar Singh*,[41] is another decision of a Division Bench in the Punjab Chief Court which took the same view. The Sind Judicial Commissioner's Court has held in *Hakim Bibi* v. *Mir Ahmed*,[42] that where a land falls within the meaning of the expression ''garden,'' though it may at the same time be land ''paying assessment to Government, it must be valued for purposes of Court-fee as provided in S. 7 (v) (*e*) of the Act.

339. VALUATION OF SUITS FOR COURT-FEE.— Under this sub-Cl. (v) (*e*), of S. 7 of the Court-Fees Act, a suit for possession of a house or garden, is to be valued for purposes of the Court-fee ''according to the market-value of the house or garden.'' Where the subject-matter of a suit for possession is a house Court-fee is to be paid *ad valorem* on the market-value thereof, and not on the rent of it. In a case where Letters of Administration were granted in respect of a house property, limited to the particular purpose of receiving the rent, and the administratrix was precluded from dealing with the property in any other way than simply to receive the rent, still the administration being in respect of house property, Couch, C. J., held, that the right to receive the rent was incidental to the property in the house, and the right way to assess the duty, under Cl. 11, Sch. I, of the Court-Fees Act, was to take the value of the house, and upon that the *ad valorem* fee ought to be paid.[43] The expression ''*market-value*'' has been defined as meaning what it would fetch in the market under the state of things existing at the time.[44] Where in a suit brought for possession of a house property defendant is in possession only of the rooms on the upper floors, the value of possession which the plaintiff seeks is not the value of the whole property and the plaintiff can value the relief at 12 times the monthly rent which the portion in occupation of the

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(39) 146 P.R. 1908=61 P.L.R. 1908=34 P!W.R. 1908.

(40) 2 Lah. Law Journal, 362=68 I.C. 345.

(41) 71 P.R. 1914=25 I.C. 545. (Held that the valuation of the suit for possession of a certain land forming a garden and two houses was not to be arrived at by the artificial 30 times Jama rule).

(42) 117 I.C. 781=1930 Sind 15.

(43) *In the goods of Ram Chunder Doss*, deceased, 18 W.R. 153=9 B.L.R. 30.

(44) *Manmatha Nath Mitter* v. *Secretary of State*, 25 C. 194=24 I.A. 177=1 C.W.N. 698 (P.C.), cited in *Rajagopala* v. *Ramasubramania*, 74 I.C. 198 (F.B.)=46 Mad. 782=1924 Mad. 19 (F.B.), 1923 M.W.N. 550=45 M.L.J. 274=18 L.W. 326=33 M.L.T. 21.

defendant would yield.[45] Where in a suit for possession falling under S. 7 (v) of the Court-Fees Act, the Court-fee is payable according to the market-value of the subject-matter of the suit, and this subject-matter is the right to eject the defendants, the value of that right is the value at which the defendant's right to remain in the house under the license of the plaintiff may be valued.[46] Similarly, it has been held in *Upendra Chandra Mitra* v. *Satcouri Dhar*,[47] that the value of a suit is the value of the subject-matter in controversy, that is, the value of the interest claimed by plaintiff.[48] Therefore, where a plaintiff seeks to establish his right as an occupancy *raiyat* in a garden and to recover possession thereof, the value of the suit must be determined with reference to the value of the interest claimed by the plaintiff, and not with reference to the entire interest in the land, that is, the interest claimed by the plaintiff as also the interest of the superior landlord.[49] Similarly, in a suit by the plaintiff for the recovery of certain land after removing the building illegally erected thereon the value of the land alone is to be taken into consideration in estimating the value of the subject-matter of the suit and not the value of the buildings sought to be removed.[50] It was held in a Full Bench of the Allahabad High Court,[1] that in a suit for the setting aside of a lease or for possession of land in which the demolition of buildings erected on the land is claimed, the value of the buildings sought to be demolished should not be taken into account in estimating the value of the suit. Stuart, C. J., observed that the "subject-matter" in Cl. (*e*) means a suit for the *possession* of a house as the sale and single subject of it, that is, for its use and enjoyment as property, and not possession of a house for the purpose of its demolition. Tyrrell, J., remarked that the plaintiff has to pay on the title he asserts, the thing he wants to recover, and he need not pay on the value of the buildings raised by the defendant. This is not a proper factor in the estimate of the plaintiff's reliefs.[2] But, if there be permanent buildings which are not sought to be demolished, they must be taken into account.[3] The trees standing on specific items claimed

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(45) *Tyabali* v. *Parpatibai*, 1932 Sind 73, followed *Mt. Moolibai* v. *Mt. Kassubai*, 1927 Sind 248.

(46) *Ram Raj Tewari* v. *Girnanandan Bhagat*, 15 All. 63=(1882) A.W.N. 240, cited in *Mt. Barkatunnissa Begum* v. *Mt. Kaniza Fatima*, 98 I.C. 817=5 Pat. 634=1927 Pat 140.

(47) 23 I.C. 964 (Cal.).

(48) *Ajoodhya Chowbey* v. *Daibee Singh*, 3 Agra H. C. (Rev. App.) 5, cited in 23 I.C. 964, *supra*,

(49) *Upendra Chandra Mitra* v. *Satcouri Dhar*, 23 I.C. 964 (Cal.).

(50) *Ramaswami* v. *Gundappa*, 7 M.L.J. 49, also see *Ramzan* v. *Allahyar*, 78 P.L.R. 1903. (*Held*, that the Court-fee in a suit for possession of land for grazing purposes, was to be calculated not on the value of the wells and buildings erected on the land, but on the Government revenue of the land only).

(1) *Jogal Kishor* v. *Bindeshri Chaubey*, 4 All. 320 (F.B.)=2 A.W.N. (1882) 44.

(2) *Ibid.*

(3) 1886 A.W.N. 106.

in the plaint need not be separately valued. They are included in the valuation of the items themselves.[4]

340. VALUATION OF SUITS FOR JURISDICTION.— Suits referred to in S. 7 (v) (*e*) of the Court-Fees Act are excluded from S. 8 of the Suits Valuation Act; and S. 3 of the Act only gives power to make rules for determining the value of "land." Accordingly, the valuation of houses is a *causes omissus* from the Suits Valuation Act, and under the general principles of the Suits Valuation Act, the value for Court-fees is to be the value for jurisdiction.[5] In 72 P.R. 1899, where the plaintiff had sued as a pauper for possession of a house arbitrarily valuing it at Rs. 8,000 and the defendant urged that the market-value was below Rs. 5,000, it was held that in a suit for a house the value for purposes of Court-fees and jurisdiction should be the same, namely, the market-value; and that the market-value should, in the circumstances of the case, be the value as assessed by the Court, and not that estimated by the plaintiff, which was apparently exaggerated. This was referred and followed in the Full Bench case, of *Abdul Rahman* v. *Chiraghdin*.[6] It was held that the allegation contained in the plaint as regards valuation in such suits is purely tentative. It is subject to an adjudication by the Court, and liable to be varied. It is the duty of the Court in such cases to ascertain the valuation for the purposes of Court-fee and in the case of a conflict between the value fixed by plaintiff, and that ascertained by the Court, the latter ought certainly to prevail, and not the former.[7] It was observed that it is not only convenient, but also reasonable that the value finally adjudicated upon by the Court, for the purposes of Court-fees, should furnish the test for determining the question of jurisdiction both in the first instance as well as for appeal. When the Court makes an adjudication its finding replaces the tentative value put by the plaintiff and the future procedure must depend on the value so fixed as it is final until set aside on appeal.[8] This view has been approved in a later Full Bench ruling of the Lahore High Court, in *Sundar Das* v. *Mt. Umda Jain*.[9] It has to be noted, further, that "the valuation of a suit is to be determined not upon the plea taken in the written statement but upon the allegations as made in the plaint.[10]

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(4) *Kullappa Gounden* v. *Abdul Rahim Sahib*, 39 I.C. 254=40 Mad. 824=5 L.W. 270=21 M.L.T. 251, cited in *Subramania Ayyar* v. *Rama Iyer*, 105 I.C. 881 (883)=1927 Mad. 1002=54 M.L.J. 67=27 L.W. 489.

(5) *Mrs. R. Parsick* v. *Mr. H. Parsick*, 72 P.R. 1899. (*Cf.* 101 P. R. 1900, where it was held "that ordinarily, and in the absence of *Mala fides* on the part of the plaintiff, the value for purposes of jurisdiction must be determined with reference to the claim made, and not to the decision upon that claim").

(6) 19 P.R. 1908 (F.B.)=129 P.L.R. 1908=38 P.W.R. 1908.

(7) 19 P.R. 1908 (F.B.) at pp. 128, 129.

(8) (*Ibid.*).

(9) 82 I.C. 614 (F.B.)=6 L.L.J. 355=5 Lah. 481=1924 Lah. 1 (F.B.).

(10) *Mt. Barkatunnissa Begam* v. *Mt. Kaniza Fatima*, 98 I.C. 817=5 Pat. 631=1927 Pat. 140, per Kulwant Sahai, J.

341. VALUATION IN APPEAL.—It was held in the Full Bench case, of *Abdul Rahman* v. *Chiraghdin*,[11] that the market value of the house, as found by the Court, for the purposes of Court-fee, should furnish the test for determining the question of jurisdiction both in the first instance as well as for appeal. And this view has been approved by the Lahore High Court in the Full Bench case of *Sundardas* v. *Mt. Umda Jan*,[12] where it was held that the value for purposes of appeal, of a suit for possession of a house is the market-value of the house as ascertained by the Court, and not the value as stated by the plaintiff in his plaint.

Paragraph VI: Suit to Enforce a right of pre-emption.

Synopsis.

I. Court-fee in pre-emption suits.
(i) Lands paying revenue.
(ii) Lands exempt from revenue.
(iii) Sale of Equity of Redemption.
(iv) Market-value on the date of sale.
(v) Value of improvements.
(vi) Houses and Gardens.
II. Valuation for jurisdiction.
III. Valuation in appeals.

342. COURT-FEE IN PRE-EMPTION SUITS—(1) Lands paying Revenue.—The PUNJAB CHIEF COURT has held that in a suit for pre-emption, where the subject-matter of the sale is land paying revenue, the fee payable is to be calculated under S. 7 (v) of the Court-Fees Act.[13] To the same effect is the observation in an ALLAHABAD case, that under Cl. VI of S. 7, of the Court-Fees Act, in suits to enforce a right of pre-emption, the fee is payable on the value computed in accordance with Cl. (v) of the same section.[14] The MADRAS HIGH COURT, similarly, holds that the proper valuation of a suit to enforce a right of pre-emption is, in accordance with S. 14 of the Madras Civil Courts Act, that fixed in the manner provided by the Court-fees Act, S. 7, Cl. (v).[15] In suits for pre-emption of land, falling under Cl. (v) (*b*) of the Act, the value on which the fee is payable, is five times the revenue so payable where the land is not permanently settled. By Cl. (*d*) of the same Sub-Section 2(v), the fee is payable on the market-value: and, by Cl. (*a*) 18 of Notification No. 4650, dated the 10th of September, 1889, the value on which the fee is payable is not to exceed five times such portion of the revenue separately assessed on that part as may be rateably payable in respect of that share.[16] The effect of these rules is that Court-fee is payable on five times the Government revenue where the subject-matter of the suit is:—

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(11) 19 P.R. 1908=129 P.H.R. 1908=38 P.W.R. 1908 (F.B.).

(12) 82 I.C. 614=6 L.L.J. 355=5 Lah. 481=1924 Lah. 1 (F.B.).

(13) *Sundar Singh* v. *Dhian Singh*, 15 P.R. 1919=49 I.C. 358=43 P.L.R. 1919.

(14) 16 All. 493 (494) report of Taxing Officer, adopted by Burkitt, J.

(15) *P. Narayan Nair* v. *A. P. M. Cheri Kathiri*, 45 I.C. 89=34 M.L.J. 397.

(16) Reference under the Court-Fees Act, 16 All. 493 (494).

(*a*) An entire estate or definite share of an estate paying revenue to Government; or,

(*b*) part of an estate recorded as separately assessed; or,

(*c*) a fractional part of a part recorded as separately assessed by virtue of the notification.[17] In all other cases the fee is payable on the market-value. The ALLAHABAD view, that where the suit is not for a practional part, but for *distinct plots*, the fee must be paid on the market-value, has been followed by the MADRAS HIGH COURT.[18] The PUNJAB CHIEF COURT has similarly held that "unless the land in suit is a definite share in an estate paying revenue to Government or is recorded in the Collector's register as separately assessed, the stamp must be calculated upon the value of the land under S. 7 (v) (*d*), of the Court-Fees Act, and not on the revenue under S. 7, Cl. (v) (*b*) of the same sections".[19] Barkley, J., observed in *Haider Ali* v. *Sondha*[20] that "there is no provision in the Court-Fees Act for the value of a fractional part of a holding recorded in the Collector's register as separately assessed with land-revenue, being calculated on the land-revenue, and the market-value must, therefore, be taken under S. 7 (v) (*d*)."[21]

(2) **Lands exempt from revenue.**—Cl. (*c*) of S. 7 (v), provides that where the land does not pay annual revenue to the Government or has been partially exempted from such payment or is charged with any fixed payment in lieu of such revenue and net profits have arisen from the land during the year next before the date of presenting the plaint, the Court-fee is to be paid on an amount representing 15 times such nett profits. The expression "the year next before presenting the plaint" denotes a period of 365 days reckoning backwards from the date of presentation of the plaint and not any particular *fasli* year before the institution of the suit.[22] The term "land" as used in the Court-Fees Act

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(17) Reference under the Court-Fees Act, 16 All. 493 (495): also see *Durga Prosad* v. *Purandar Singh*, 27 All. 186=24 A.W.N. 210: (where the plaintiffs sued for pre-emption of shares in two villages out of a larger number sold in one and the same transaction, held that the Court-fee was payable on five times the aggregate amount of the Government revenue payable by each of the two villages).

(18) *Godavarti Mangamma* v. *Godavarti Sundaramma*, 33 I.C. 683 (followed 16 All. 493). (Market-value taken for land not separately assessed, and not a definite share of a revenue paying estate), also see *Chandan* v. *Bishan Singh*, (33 All. 630). *Held*, that a sale of certain specified plots, amounting to 2|3 of the whole estate, but not a fractional 2|3 share in each and every plot, had to be valued, for purposes of Court-fee, on the market-value under S. 7 (v) (*d*) of the Act.

(19) *Mt. Jian* v. *Mt. Nadir Nishan*, 6 P.R. 1883, cites *Haider Ali* v. *Sondha*, 102 P.R. 1880, also see and *Cf. Hasibunnissa* v. *Ghafurullah Khan*, 29 All. 382=4 A.L.J. 363.

(20) 102 P.R. 1880, followed in 6 P.R. 1883, *supra*.

(21) *Compare Baiju* v. *Mir*, 14 A.W.N. 174=16 All. 483. (*Held*, that in a suit for pre-emption in respect of separate plots of land which is not a definite share of the revenue paying estate and which are not in themselves separately assessed with revenue, the Court-fee should be paid on the market-value of the lands).

(22) *Ghasi Ram* v. *Har Gobind*, 28 All. 411 (413)=1906 A.W.N. 66=3 A.L.J. 244.

does not include buildings unless there is a distinct evidence of the user of such buildings as part and parcel of or as appurtenant to the *Zemindary* of the land.[23] Where the suit is for pre-emption of a *Zemindary* share and a grove, but the grove is not appurtenant to the *Zemindary*, the Court-fee is to be paid in addition also on the value of the grove.[24]

(3) **Sale of Equity of Redemption.**—It has been held by a Full Bench of the ALLAHABAD HIGH COURT,[25] that S. 7, Paragraph 6, dealing with suits to enforce a right of pre-emption clearly and expressly says that the Court-fee is to be "according to the value of the land, house or garden, in respect of which the right is claimed." It does not say that the Court-fee is to be according to the value of the interest in the property pre-empted. Accordingly, where the land sought to be pre-empted is subject to a mortgage, the Court-fee cannot but be assessed according to the provisions of S. 7 (vi) of the Act, upon the value of the property, computed in accordance with S. 7 (v). Their Lordships observed that "it is said that this operates very hardly upon the present plaintiff. This is, no doubt, true, but it seems to us that the hardship in his case is no greater than the hardship to a plaintiff who seeks to recover possession of immoveable property subject to incumbrances." They added that "it may be that there is reason for amendment of the Court-Fees Act." Similarly, it has been held, by the PUNJAB CHIEF COURT, that a suit where pre-emption is claimed on a transfer of equity of redemption comes within the scope of S. 7, Cl. vi of the Court-Fees Act, and that Court-fee must be paid on the market-value of the property which forms the subject of mortgage, and not on the value of such equity of redemption alone.[26]

(4) **Market-value on date of sale.**—Where in a pre-emption suit Court-fee is to be paid on the market-value of the property sold, the market-value which has to be taken is the market-value at the time of the sale, and not the market-value at the time of the suit,[27] except when the property is improved, by the purchaser subsequent to his purchase, in which case the value of the improvements is also to be taken into account.[28]

(5) **Value of improvements.**—In a suit for pre-emption the value of improvements effected by the vendee *ante litem*, the pre-emptor having stood by and taken no steps to prevent building, must be included in the value of the suit for purposes of Court-fee.[29] In an earlier Punjab case, where on a sale by occupancy tenant of his holding, the landlord sued for pre-emption, after have taken measures by a suit for injunction to

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(23) *Durga Singh* v. *Bisheshar Dayal*, 24 All. 218.

(24) *Rohan Singh* v. *Bhan Lal*, 4 All.L.J.R. 403.

(25) *Chaudhri Daryaoo Singh* v. *Bharat Singh*, 3 I.C. 562=32 All. 19=6 A.L.J. 905 (F.B.).

(26) *Ghasitamal* v. *Kanshi Ram*, 123 P.L.R. 1903.

(27) *Sher Muhammad* v. *Ahmad Said*, 69 I.C. 650=1924 Lah. 380.

(28) *Khidmat Rai* v. *Anant Ram*, 17 I.C. 245=169 P.W.R. 1912.

(29) 169 P.W.R. 1912=17 I.C. 245, *supra*.

stop the working of a well on the land, it was held by the Chief Court that the plaintiffs were not entitled to obtain a decree for possession unless and until they paid the amount by which the value of the occupancy tenure had been enhanced by the improvements made by the vendee since the date of his purchase.[30]

343. (6) Valuation of Houses and Gardens.—SEE COMMENTS UNDER S. 7 (v) (*e*) *ante*.—In a suit for possession of land forming a garden, though assessed to land-revenue, the valuation for Court-fee is governed by S. 7 (v) (*e*), Court-Fees Act, and is not arrived at either for Court-fee or in ascertaining jurisdiction by the artificial 30 times *Jama* rule.[31] This view was approved in *Behari Lal* v. *Nand Lal*,[32] where it was held that the property sold by a sale-deed described as a garden together with a house and out-houses and trees of all kinds, was to be valued, for Court-fees and jurisdiction at its market-value, and not on ten times the amount of the revenue assessed on the land. A claim for pre-emption of an INDIGO FACTORY, was similarly to be valued according to the value of the buildings constituting the factory, which was the real subject-matter of the suit, and which fell within the meaning of the term "houses" as used in the Court-Fees Act, in contradiction to lands, although the site of the factory was land paying revenue to Government.[33]

344. VALUATION FOR JURISDICTION.—(1) O. 7, R. 1 (1), of the Civil Procedure Code, (Act V of 1908) provides that the plaint should contain a statement of the value of the subject-matter of the suit for the purposes of Court-fee and jurisdiction so far as the case admits. The value of a suit for pre-emption for purposes of jurisdiction need not be the same as for Court-Fees Act (*vide* S. 8, Suits Valuation Act). Under S. 3 of the Suits Valuation Act, the Local Government may make rules for determining the value of a suit for jurisdiction. In the Punjab, rules have been framed under S. 3 of the Suits Valuation Act, but in Bengal, the value is determined under S. 20, of the Bengal Civil Courts Act,[34] and in Madras, the value is determined under S. 14 of the Madras Civil Courts Act.[35] The rules as regards the valuation for jurisdiction framed by the Punjab Government, state that the value of a pre-emption suit for purposes of jurisdiction is 30 times the proportionate amount of revenue recorded as payable for the holding, in which the land in suit is comprised even though it be a specified plot by metes and bounds and not a definite share of the holding.[36]

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(30) *Fazal* v. *Godar Khair*, 161 P.R. 1883.

(31) *Mt. Bhag Bhari* v. *Jawahar Singh*, 25 I.C. 545=71 P.R. 1914=241 P.L.R. 1914=155 P.W.R. 1914.

(32) 68 I.C. 345=2 L.L.J. 362.

(33) *Durga Singh* v. *Bisheshar Dayal*, 24 All. 218.

(34) *Nanu Singh* v. *Rash Behari Singh*, 13 Cal. 255.

(35) *Narayanan* v. *Cheria Kadiri*, 41 Mad. 721=45 I.C. 89=34 M. L.J. 397.

(36) *Arshad Ali* v. *Bichha Lal*, 94 I.C. 125=8 L.L.J 58, citing *Muhammad Afzal* v. *Nand Lal*, 16 P.R. 1908 (F.B.) also see *Fata* v.

(2) The Suits Valuation Act, VII of 1887, provides in S. 8, that the value for Court-fee and jurisdiction to be the same in several cases, excepts *inter alia*, suits relating to pre-emption. But S. 3 (1) of the Suits Valuation Act providing for rules by the Local Government for determining the value of *land* for purposes of jurisdiction, omits the case of houses, which is a *causes omissus* in the Act. Accordingly, under the general principles of the Suits Valuation Act, the value for Court-fee is also the value of the suit for jurisdictional purposes.[37] But, it has been held, by the Punjab Chief Court in a *Imam Din* v. *Ghulam Muhammad*, that in such a case the valuation for purposes of jurisdiction should ordinarily and in the absence of any circumstances suggestive of *mala fides* on the part of the plaintiff be determined with reference to the claim made and not to the decision of the Court upon that claim.[38] As regards the forum of appeal, it has been held by the Punjab Chief Court, that in a pre-emption suit relating to land of which the value for purposes of jurisdiction, under the Suits Valuation Act is less than Rs. 5,000, but in which a decree has been passed by the Court of first instance on payment of more than Rs. 5,000, an appeal lies to the Divisional Court (now District Court), and not to the High Court.[39]

(3) The CALCUTTA HIGH COURT has observed in *Nanu Singh* v. *Rash Behari Singh*[40] that the subject-matter in dispute in a suit for the enforcement of the plaintiff's right of pre-emption "is the right of pre-emption which the plaintiff asserts that he has in respect of the property in suit," and that, "it is not very easy to lay down any general principle, for ascertaining the value of a right of pre-emption in any given case. For example, if a plaintiff seeks to recover possession of a property covered by his *pottah*, and the rent charged upon the property is of considerable amount, the value of the property itself would not be the value of the right which the plaintiff would seek to recover." Again, the value of the property, in a suit for pre-emption, for purposes of jurisdiction, is not necessarily the sale

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Khan Bahadur, 46 P.R. 1908. (*Held*, that under the Suits Valuation Act, the value for purposes of jurisdiction, in a suit for pre-emption of a portion of a *Khata* separately assessed to revenue is 30 times the rateable portion of the revenue payable in respect of that part. But that a Court has no jurisdiction to *pass a decree* for pre-emption where the sum payable exceeds the limits of the Court's pecuniary jurisdiction).

(37) *Mrs. Parsick* v. *Mr. Parsick*, 72 P.R. 1899, *Cf. Imam Din* v. *Ghulam Muhammad* 101 P.R. 1900.

(38) 101 P.R. 1900.

(39) 15 I.C. 347=83 P.R. 1912=170 P.W.R. 1912. (*Held* that in a pre-emption suit relating to revenue paying agricultural land, the value of the suit, both for purposes of jurisdiction and Court-fees, is fixed once and for all by the rules framed under the Suits Valuation Act, S. 3, and by the Court-Fees Act, S. 7, Cl. (v) and (vi).

(40) 13 Cal. 255.

consideration recited in the sale deed.[41] Where the property has been sold to the vendee really for a fancy price, the value of the right of pre-emption is, *ex hypothesi*, much more than the market-value of the property. On the other hand, the value of the right of pre-emption may be less than the market-value, where the property has not fetched the proper price, or is foreclosed for an amount much below the market-value.[42] But the value of the subject-matter of the suit for pre-emption is the value of the property in those cases, where the plaintiff claims possession upon payment of the real value of the property, alleging that the price mentioned in the sale deed has been paid or fixed in bad faith.[43] For instance, when property is sold for, say, Rs. 700; and the plaintiff seeks to pre-empt the same by paying that very amount, the value for jurisdiction cannot be more than Rs. 744.[44] Similarly, where the plaintiff admitting that the sale was in fact made for a sum mentioned in the sale-deed, claimed to take over the property on payment of that sum, the value of the suit cannot exceed that amount, whatever may be the market-value of the property.[45] But, where a person claims pre-emption on the allegation that the price stated in the sale-deed is fictitious, and has not been paid or fixed in good faith, the suit must be valued at the market-value of the property sold.[46] Similarly, where the sale-deed mentioned that Rs. 10,000 was the sale consideration, but the ostensible price was neither paid, nor fixed in good faith, and the trial Court had held the market-value to be the price found actually paid *viz.*, Rs. 6,800, and the vendee appealed; it was held that the appeal was correctly valued on the amount fixed by the trial Court and the fact that the appellant himself asserted the value of the property to be Rs. 10,000 did not affect the question.[47] Likewise it was held in *Baldeo Prasad* v. *Har Ratan*,[48] that in a pre-emption suit, the jurisdiction of the Court is to be decided by the valuation set forth by the plaintiff in the plaint, and not by the price set out in the sale-deed upon which the suit for pre-emption is based. Where, however, the value of the property is admittedly greater than the amount for which the property is sold, the plaintiff cannot be required to value the claim beyond the consideration recited in the sale-deed,[48] which is *prima facie* the value of the pre-emptive right asserted by the plaintiff.[49]

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(41) See *Sheodat Singh* v. *Bishunath Singh*, 6 O.C. 255; *Tek Chand* v. *Tara Chand*, 5 Lah. 114=85 I.C. 556=1924 Lah. 494; also see *Roghubar Dayal* v. *Kanhaiya Baksh Singh*, 89 I.C. 443=1925 Oudh 493=12 O.L.J. 297=2 O.W.N. 383: and, *Baldeo Prasad* v. *Har Ratan*, 9 I.C. 414 (Oudh).

(42) Kathalay's Law of Pre-emption, p. 647, II 1477.

(43) *Sheodat Singh* v. *Bishunath Singh*, 6 O.C. 255.

(44) *Naun Singh* v. *Rash Behari Singh*, 13 Cal. 255.

(45) *Sheodat Singh* v. *Bishunath Singh*, 6 O.C. 255 (257).

(46) *Raghubar Dayal* v. *Kanhaiya Baksh Singh*, 89 I.C. 443=1925 Oudh 493=12 O.L.J. 297=2 O.W.N. 383.

(47) *Tek Chand* v. *Tara Chand*, 5 Lah. 114=85 I.C. 556=1924 Lah. 494.

(48) 9 I.C. 414 (Oudh).

(49) *Kishen Dayal* v. *Raja Singh*, (1908) 12 O.C. 31=1 I.C. 687 (2).

345. VALUATION IN APPEAL—(1) Allahabad.—It was held in *Hafiz Ahmad* v. *Sobha Ram*,[50] that "where an appeal is preferred in a suit for pre-emption, on the ground that the right to pre-empt has or has not been established, as the case may be, no matter what other pleas may be taken, the VALUE OF THE SUBJECT-MATTER IN DISPUTE, for the purposes of the Court-Fees Act, must be determined as in terms provided in Art. (vi) of S. 7 of the Act. But when the question in appeal relates solely to the amount to be paid by the pre-emptor, then we think that it should be calculated *ad valorem* on the difference between the amounts alleged as the sale price on the one side and the other." Accordingly, where in a suit for pre-emption, the defendants-vendees appealed disputing the right of pre-emption which was decreed on payment of Rs. 2,000 (the sale-consideration), and they also claimed to charge Rs. 1,200 to the plaintiffs for the amount actually paid to the mortgagee, it was held that the value of the right of pre-emption, which was the subject-matter of the dispute between the parties, was to be determined in manner directed by S. 7 (vi) of the Court-Fees Act, and no *ad valorem* Court-fee was required on the amount of Rs. 1,200 claimed in appeal. In *Abinash Chandra* v. *Shekhar Chand*,[1] where the sale-deed in respect of certain property purported to be for the sum of Rs. 44,000, and plaintiff's claim was dismissed in respect of three villages, but decreed as regards the remaining property on payment of a proportionate amount of Rs. 21,000: and, the plaintiff claimed a right of pre-emption on appeal in respect of 3 villages, and the plaintiff sought to pre-empt the whole property upon the payment of Rs. 2,500, it was held that the appeal was divisible into two clear and distinct parts: and, the Court-fee in respect of the two villages will be calculated *ad valorem* on the difference between 21|44 of Rs. 2,500, and Rs. 21,000: but the Court-fee in respect of the other three villages will be calculated according to S. 7 (vi), of the Act on the basis of 5 times the Government revenue. Following, *Hafiz Ahmad* v. *Sobha Ram*,[2] it was held by the Oudh Judicial Commissioner's Court, that where the question in appeal relates solely to the amount to be paid by the pre-emptor, the Court-fee should be calculated *ad valorem* on the difference between the amounts alleged as the sale-price on the one side and the other.[3]

(2) **Punjab.**—In *Warzam Singh* v. *Mahtab Singh*,[4] where in a pre-emption case, plaintiff claimed to pre-empt the property sold on payment of Rs. 11,000 although the entry in the Patwaris' roznamacha relating to sale mentioned Rs. 56,000 as the sale consideration and plaintiff paid court-fee on five times the revenue assessed upon the land, but on defendant's objection, plaintiff

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(50) 6 All. 488=4 A.W.N. (1884), 179.

(1) 40 All. 353=44 I.C. 666=16 A.L.J. 174.

(2) 6 All. 488, *supra*.

(3) *Mathura Prasad* v. *Karam Singh*, 1929 Oudh 240 (2)=117 I.C. 480=6 O.W.N. 276.

(4) 76 P.R. 1913 (F.B.)=240 P.L.R. 1913=141 P.W.R. 1913=19 I.C. 961 (F.B.).

was made to pay court-fees *ad valorem* on the sale consideration and the claim being decreed on payment of Rs. 56,000, both the pre-emptor and the vendee filed cross-appeals, the former urging that he should be allowed to pre-empt upon payment merely of Rs. 11,000 and the latter contending that the plaintiff had no right of pre-emption and that his suit should be dismissed, it was held by a Full Bench of the Punjab Chief Court, that (1) the question of proper court-fee leviable on the appeals must be decided with reference to the terms, not of cl. (vi) of S. 7 of the Act which is not applicable to appeals in pre-emption suits but of Art. I of the first schedule to the Act, which provides that the Court-fees upon a memorandum of appeal is to be computed *ad valorem* with reference to the "amount or value of the subject-matter in dispute;" (2) that in the appeal preferred by the pre-emptor the object being to have the amount payable reduced by the sum of Rs. 45,000, this sum represented the value of the subject-matter of his appeal, and it was upon that sum that he must pay the *ad valorem* fee specified in Art. 1 of the first Schedule to the Act; (3) that the subject-matter of the vendees' appeal was the land which accordingly to his allegations had been wrongfully decreed to the plaintiff. Consequently, the Court-fee to be paid on the memorandum of appeal was to be computed according to the value of the subject matter of his appeal, *re*, the land, and the value of such land for the purposes of Court-fee must be estimated in accordance with the provisions of S. 7 (vi) of the Court-Fees Act. It was observed that the fact that it was upon the vendees' objection that the plaintiff was compelled to affix a higher Court-fee, did not affect the question. The judgment in *Hazari Singh* v. *Piran*,[5] where it was held that in a pre-emption appeal by the vendee-defendant for a sum of money disallowed by the lower court out of the price stated in the deed of sale, the difference of price was not to be taken as the measure for Court-fee, and that the case being concerned with land for which an artificial value, is fixed by special rules in this Province, Court-fee paid at five times *Jama* value, of the land in suit, was sufficient, was criticised and not followed in the Full Bench ruling on the ground that it proceeded upon the assumption that S. 7 (vi) was applicable to appeals in preemption cases and ignored the express terms of Art. 1. of the Schedule. The Full Bench case in 76 P.R, 1913, was referred in *Sohanlal* v. *Sardar Khan*,[6] where in a suit to set aside certain sales of land, the Lower Court had fixed the value of the improvement, by the defendants at Rs. 2,800 only and on appeal the defendants urged that even if the sales were set aside, they ought to be allowed a further sum of Rs. 5,000: it was held, that in cases where the whole subject-matter of the suit is also the subject of the appeal, the Court-fee payable on the part of a whole claim in appeal is not to exceed the Court-fee payable on the whole claim. This principle was laid down in *Hazari Singh*

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(5) 92 P.R. 1900.

(6) 25 P.R. 1916=16 P.W.R. 1916=67 P.L.R. 1917=32 I.C. 121.

v. *Piran*,[7] and has been accepted in *Harbhagwan* v. *Amar Singh*,[8] where in a suit to pre-empt the sale of a house the plaintiff asserted that the ostensible price mentioned in the sale-deed, *viz.*, Rs. 10,000 was fictitious, and claimed a decree on payment of Rs. 5,100 the suit was decreed on payment of Rs. 6,800; and the vendee appealed asking for a deree restoring that property to him, or else requiring the successful pre-emptor to pay him an additional sum of Rs. 3,200, the Court-fee was payable on the higher of the two alternative reliefs, and the vendee's appeal, valued at Rs. 6,800, the figure at which the Court below had valued the property in suit, was held to be sufficiently stamped. The fact that the appellant himself asserted the value of the property to be Rs. 10,000 did not affect the question.[9] However, it has been held in *Nazar Muhammad* v. *Kala Ram*.[10] that "it is an anomaly of the law of Court-fees that a person who appeals only against a part of the decree should have to pay more Court-fee than the one who appeals against the whole of it. But a litigant is entitled to appeal against the whole of a decree though he intends to attack only a part of it." Accordingly, where a suit for pre-emption was decreed, and the market-price of the property was fixed at Rs. 27,000 and the vendees appealed alleging Rs. 43,000 to be the proper value, and they sought not only the enhancement of the market value but also dismissal of the plaintiff's suit on ground of limitation and non-maintainability, but the real object of the appeal was to have the value enhanced while avoiding payment of Court-fees on a larger amount, by the vendees resorting to the trick of adding grounds for dismissal of the suit, it was held that the appeal was competent.[11] The case-law was again reviewed in *Surain Singh* v. *Sunder Singh*,[12] where in the suits by rival pre-emptors, a conditional decree was passed in favour of one on payment of Rs. 8,000, and the other appealed to set aside the decree and obtain dismissal of rival's suit on the ground of collusion with vendee and for reduction of amount payable to Rs. 5,000 it was held that the memorandum of appeal was correctly stamped with 10 times the amount of the *Jama*, inasmuch as Surain Singh had in his appeal to the District Court asked for the dismissal of the suit of the rival pre-emptors, on a ground which struck at the root of the whole case, and had not solely asked for a reduction of the pre-emptor money from Rs. 8,000, to Rs. 5,000. Their Lordships held, further that the admission that the appeal was understamped, was not binding on the appellant, being an admission on a point of law.[13] The ruling in

(7) 92 P.R. 1900.
(8) 83 I.C. 332=5 Lah. 137=1924 Lah. 530.
(9) *Tek Chand* v. *Tara Chand*, 85 I.C. 556=5 Lah. 114=1924 Lah. 494.
(10) 1929 Lah. 190=9 Lah. 563=113 I.C. 538, also see *Harichand* v. *Attar Singh*, 1931 Lah. 490=131 I.C. 751. (*Held*, that Vendees challenging pre-emptor's right to sue have to pay stamp in appeal as was originally paid by pre-emptor).
(11) *Nur Muhammad* v. *Kala Ram*, 9 Lah. 563=1929 Lah. 190, also see remarks in *Pathuma* v. *A. Moideen* (common flages allowed in law of Court-fees).
(12) 1929 Lah. 879=120 I.C. 532.
(13) (*Ibid.*).

Nazar Muhammad v. *Kala Ram* has been followed by another Division Bench of the Lahore High Court, where it has been held that however anomalous it may be, if the vendees challenge the right of the pre-emptors to bring the suit, the stamp payable by them is reduced to the amount originally paid by the pre-emptors.[14]

Paragraph (vii) Suit for interest of assignee of land-revenue.

Synopsis.

I. Scope of the clause. II. Value for jurisdiction.

346. SCOPE OF THE CLAUSE.—Where a person claiming to be entitled to the land-revenue as assignee from the Government, brings a suit against any person who denies or is interested in denying such right, the suit is to be valued under this clause as one for possession of revenue free land, and Court-fee is payable as in S. 7 (v) (c), on 15 times his nett profits as such for the year next before the date of presenting the plaint[15]

347. VALUATION FOR JURISDICTION.—Under S. 8, of the Suits Valuation Act, the value for jurisdiction is the same as for Court-fees.

Paragraph (viii) Suit to set aside an attachment.

Synopsis.

I. Scope of the clause.
II. Value for Court-fee.
III. Sch. II, Art. 17 (i).
IV. Value for jurisdiction.

348. SCOPE OF THE CLAUSE.—This clause applies to suits to set aside an attachment (1) of lands, or (2) of an interest in land, or (3) of interest in revenue.

The suits contemplated in this clause are suits brought in pursuance of the permission given in the concluding passage of S. 246 of Act VIII of 1859.[16] It was held in the Full Bench Case, of Bombay High Court in *Daychand Nemchand* v. *Hemchand Dharamchand*[17] that two classes of suits might be brought in pursuance of that permission:

(1) Suits to set aside an attachment where the intervenient, under S. 246, has failed in his application, under that Section, to have an attachment set aside.

(2) Suits to restore an attachment where the intervenient, under S. 246, has succeeded in his application under that Section by obtaining a discharge of the attachment. It was observed that "there is nought in the language of Cl. (viii) of S. 7 to limit its scope to set aside any special kind of attachments on land. It is

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(14) *Hari Chand* v. *Attar Singh*, 1931 Lah. 490=131 I.C. 751.

(15) *Ghasi Ram* v. *Har Gobind*, 28 All. 411=1906 A.W.N. 66=3 A.L.J. 244. (The expression year next prior to suit, means 365 days, calculated backwards from the date of plaint).

(16) See S. 283, Act XIV of 1882, and O. 21, R. 63, Civil Procedure Code Act V of 1908.

(17) 4 Bom. 515 (F.B.).

large enough to include suits, brought in pursuance of the permission given by S. 246 of Act VIII of 1859, to set aside attachments on land, as well as other suits for that purpose brought independently of that Section. A person, whose property was wrongfully attached, was not compelled to resort, in the first instance, to an application under S. 246 of Act VIII of 1859. There was nothing to prevent him from commencing his litigation by a regular suit, if such were his pleasure. Again, there are suits to raise attachments on land where the plaintiff has never had any opportunity of resorting to an application under that section of these. The *Collector of Thana* v. *Dadabhai Bomanji*,[18] decided by Melvill and Kemball, JJ., is one of the many instances which might be suggested. That was a suit to set aside a summary attachment laid on by a Collector under Bombay Act I of 1865.''

Suits brought to set aside or to restore an attachment upon a *house*, in pursuance of the permission given in Civil Procedure Code, would not fall under S. 7, (viii) as the term *land* in Cl. (viii) does not include a house.[19]

349. VALUATION FOR COURT-FEE.—(1) The word ''*value*'' in the last clause must be construed in the same way as in the previous clauses of the same section, and, therefore, in the case of land held on a settlement for a period not exceeding thirty years, and paying the full assessment to Government, the value must be deemed to be a sum equal to five times the Survey Assessment. The meaning of Cl. (viii) evidently is that a person suing to set aside an attachment on land shall in no case be called upon to pay a higher fee than he would have to pay if he were suing for possession of the land.[20]

(2) A SUIT TO SET ASIDE A SALE IN EXECUTION, on the ground that the attachment is not binding, is virtually a suit to set aside an attachment, and the Court-fee should be paid on the amount for which the land or interest is attached, if the value of the land or interest attached is greater than the value of the amount due to the creditor. But, if the value of the land or interest is less than the amount due to the creditor, the Court-fee is on the value of the land or interest as though the suit were one for possession of land or interest.[21]

(3) The valuation for Court-fee in respect of a suit, to set aside an attachment by an execution creditor, brought by the trustees of an assignment of an insolvent trader for the benefit of his creditors, is to be calculated on the value of the lien claimed by the Judgment-creditor.[22]

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(18) 1 Bom. 352 (357).

(19) *Dayachand Nem Chand* v. *Hemachand Dharmchand*, 4 Bom. 515 (F.B.).

(20) *The Collector of Thana* v. *Dadabhai Bomanji*, 1 Bom. 352 (357, 358).

(21) *Gangadhar Aiyar* v. *Vela Chetty*, 14 M.L.J. 144.

(22) *Cecil Stephenson* v. *Baumgartner*, 3 Agra, 104.

350. Sch. II, Art. 17 (i).—A Full Bench of the Bombay High Court,[23] has held, that SUITS BROUGHT TO SET ASIDE OR TO RESTORE AN ATTACHMENT UPON A HOUSE, in pursuance of the permission given in the Civil Procedure Code, may be regarded either as "suits to obtain a declaratory decree or order where consequential relief is prayed" so as to fall within S. 7, Cl. (iv) (*c*) of the Act; or, as suits to obtain or set aside a summary decision or order, in which case the stamp duty payable would be that prescribed by Art 17 (*i*) Sch. II of the Court-Fees Act. In the absence of any definition, in the Court-Fees Act, of the term "SUMMARY DECISION OR ORDER", their Lordships were disposed to regard it as a decision or order not made in a regular suit or appeal; and consequently, the decisions as to the removal or retention of attachments, pronounced under Civil Procedure Code, were held to be summary decisions or orders. Further, there being two provisions in the Court-Fees Act, each of which is sufficiently comprehensive to include suits brought pursuant to the permission given by the Civil Procedure Code, it was the Court's duty, inasmuch as the Court-Fees Act is a fiscal enactment, to adopt that construction which generally would press least heavily on the subject. Accordingly, it was held that Art. 17, Cl. (1) of Sch. II of the Act was properly applicable to such cases, and a fixed fee Rs. 10, was chargeable on a plaint or memorandum of appeal in a suit to set aside a summary decision or order of a Civil Court not established by letters patent.[24] In *Phul Kumari* v. *Ghanshyam Misra*,[25] their Lordships of the Privy Council have held to the same effect. In a suit by an unsuccessful objector, for a declaration of his right to the property wrongly attached in execution of defendant's decree, and for an injunction to restrain the decree-holder from executing his decree against it, their Lordships held that it was a mistaken view to treat the suit as one for a declaration, with a consequential relief; and, that considering the objects and the nature of the suit, the words in Art. 17 (*i*) of Sch. II of the Court-Fees Act were an exact description of the effect of the appellant's suit, and with merely a verbal or formal difference, "S. 283 of the Civil Procedure Code, under which section the action was brought, recognized such a suit as not merely an appropriate, but the only mode of obtaining review in such cases". As regards valuation their Lordships held that to take the sum in the execution decree was "plainly a fallacious proceeding." It was held that "the value of the action must mean the value to the plaintiff. But the value of the property might quite well be Rs. 1,000, while the execution debt was Rs. 10,000. It is only if the execution debt is less than the value of the property that its amount affects the value of the suit."[26]

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(23) *Daya Chand Nem Chand* v. *Hemachand Dharamchand*, 4 Bom. 515, (F.B.).

(24) *Ibid.* 4 Bom. 515 (F.B.) at p. 523.

(25) 35 Cal. 202 (P.C.).

(26) *Phul Kumari* v. *Ghanshyam Misra*, 35 Cal. 202 (207).

351. VALUE FOR JURISDICTION.—The value for jurisdiction, in such cases, is the same as for Court-fees, (S. 8, Suits Valuation Act).[27] Where the value of the property in suit is higher than the amount of the decree, the valuation for jurisdiction is rightly limited to the amount of the decree, that being all that is recoverable in the event of the plaintiff being successful.[28] But, where the claim of the plaintiff is to have certain property declared liable to sale in execution of his decree for an amount higher than the value of the property which the decree-holder seeks to have sold, then in this case the value of the property determines the jurisdiction.[29] The rule is thus expressed in *Dwaraka Das* v. *Kameshwar Prosad*.[30] When the only parties to a suit under S. 283, Civil Procedure Code, 1882 are the execution-creditor or his representative on one side, as plaintiff or as defendant, and the claimant-objector or his representative on the other, and the sole question in the suit between such parties is the question whether the property attached in execution of the decree of the execution creditor is or is not liable to be attached and sold in execution of the decree of the execution-creditor, the value of the suit, within the meaning of Ss. 19 and 21 of Act. No. XII of 1887, which, by C. (xiii) of S. 3 of Act No. I of 1887, means "the amount or value of the subject-matter of the suit", is the value of the property sought to be sold in execution of the decree, when the amount of the decree exceeds the value of the property, and the value of so much of the property sought to be sold as will on a sale satisfy the amount sought to be realized by the sale, when the value of the property attached exceeds the amount sought to be realized, and that in such latter case the amount which it is sought to realise by a sale under the decree may be taken as the value of that portion of the property the sale of which will theoretically, although possibly, not in practice, be sufficient to satisfy the amount sought to be realised by a sale."[31] But, when in a suit under S. 283 of Act XIV of 1882, the claimant-objector makes the judgment-debtor or his representative party as defendant to the suit, the property attached must be regarded as the subject-matter of the suit, and the value of the suit, within the meaning of Ss. 19 and 21 of Act XII of 1887 must be the value of the property attached, whether such value exceeds or is less than the amount which is sought to be realized by the sale of the property in execution of the decree.[32] In suits under S. 283, of the Civil Procedure Code of 1882, the test for the purposes of Court-fees is,

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(27) *Dayaram Jagjivan* v. *Gordhandas Daya Ram*, 31 Bom. 73=8 Bom.L.R. 885.

(28) *Gulzari Lal* v. *Jadam Rai*, 2 All. 799, also see *Modhusudden Koer* v. *Rakhal Chunder Row*, 15 Cal. 104 (amount which is to settle the jurisdiction is the amount of the debt, and not the value of the property),

(29) *Durga Prasad* v. *Rachla Kuar*, 9 All. 140=6 A.W.N. (1886), 328.

(30) 17 All. 69.

(31) *Dwarka Das* v. *Kameshwar Prasad*, 17 All. 69=15 A.W.N. (1895) 3.

(32) *Ibid.* 17 All. 69=15 A.W.N. (1895), 3.

what is the value of the quantum of interest which the plaintiff wishes to establish.[33] The difference between cases where the judgment-debtor is a party and cases where he is not, is pointed out in *Dhan Devi* v. *Zamurrad Begum*,[34] and *Krishnasami Naidu* v. *Somasundaram Chettiar*.[35]

Paragraph (ix) Suits for redemption, foreclosure or conditional sale.

Synopsis.

I. Amendment.
II. Scope and applicability.
III. Scheme of Valuation in Suits for Redemption.
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C. In appeals.
(i) Application of paragraph to suits or appeals.
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IV. Foreclosure suits.
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(ii) Court-fee in Foreclosure suits.
(iii) Court-fee in appeals.
V. Suit for mortgage by conditional sale.

352. **I. AMENDMENT.**—By virtue of Act III of 1932 (United Provinces) a suit to foreclose, or to have the sale declared absolute has to be valued according to the total amount claimed by way of principal and interest.

353. **II. SCOPE AND APPLICABILITY—General observations.**—This clause applies (1) to suits by a mortgagor, against a mortgagee, for redemption of mortgaged property; (2), to suits by the mortgagee, against the mortgagor, to foreclose the mortgage; and, (3) to suits by a mortgagee to have a mortgage by conditional sale made absolute. But this clause does not apply to mortgages of moveable property, of the nature of pawns or pledges; or, to suits by a mortgagee to recover *money* on a mortgage.[36] A "Mortgage," as defined in S. 58 of the Transfer of Property Act "is the transfer of an interest in specific *immoveable property* for the purpose of securing the payment of money advanced, to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a precuniary liability." The words "MORTGAGOR," and "MORTGAGEE," as explained in S. 60, of the Transfer of Property Act, mean the transferor, and transferee, respectively. These words are not defined for purposes of the Court-Fees Act, but in ordinary sense, the word "mortgagor" would include any person who can claim the right to redeem; and, the word "mortgagee" would include any person against whom the mortgagor would be required to sue in order to redeem the property. For instance, where a trespasser has held the property adversely to the

(33) *Narayana Singh* v. *Ayyasamy Reddi*, 27 I.C. 265=1914 M.W.N. 910 (followed *Dwarkadas* v. *Kameshwar Prasad*, 17 All. 69, and *Fisher* v. *Arunachella Chettiar*, 2 I.C. 522=5 M.L.T 70=19 M.L.J. 236).

(34) 27 All. 440=2 A.L.J. 115=A.W.N. (1905) 37.

(35) 30 Mad. 335=17 M.L.J. 95=2 M.L.T. 116 (F.B.).

(36) See 7 Bom. L.R. 194, also see D.C.R. (Cent. Prov.) Part V (3).

mortgagee for over 12 years, the mortgagee's rights became extinct, and vested in the trespasser; and, the plaintiff therefore, is required to pay the mortgage-money to the trespasser in order to redeem the property.[37] The right to redeem, embraces the right to require the mortgagee (*a*) to deliver the mortgage-deed, if any, with the mortgagor; (*b*) where the mortgagee is in possession of the mortgaged property to deliver possession thereof to the mortgagor.[38] A suit to enforce the right to redeem is called a suit for redemption. Cl. (1) of the paragraph, however applies not only to suits against a mortgagee for redemption, but to all suits for the recovery of the property mortgaged.[39] Thus, a suit for redemption where one of the questions at issue is whether the mortgage-money is paid off, and if not, what is the amount remaining due, would come under S. 7 (ix), of the Court-Fees Act.[40]

354. SUIT FOR REDEMPTION OF KANOM.—A suit for recovery of possession of property mortgaged under a usufructuary mortgage also falls under Cl. (1).[41] A suit for redemption of a *kanom* would also fall under S. 7, paragraph (ix),[42] although a *kanom* mortgage in Malabar is not purely a mortgage, but may in part be a lease also.[43]

355. APPLICATION OF PARAGRAPH TO SUITS AND APPEALS.—There is a conflict of view on the question, which will be noticed in detail under the heading "*valuation in appeal.*" The Allahabad, Madras, and Lahore High Courts hold that this paragraph applies to suits and not to appeals: while Nagpur, Oudh, etc., cases take the opposite view.[44] According to the former view Art. 1, Sch. I, applies, and the material thing is to see the subject-matter of suit in appeal, which is not necessarily the same as in the original suit.

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(37) *Ram Sarup* v. *Gangasabai*, 20 I.C. 468.

(38) Section 60, Transfer of Property Act.

(39) *Maruti* v. *Sripati*, 1889 P.J. 58, also see *Kadi Venkatappa Row* v. *Suryanarayana*, 17 I.C. 442=12 M.L.T. 493. (*Held*, that in a suit by the mortgagor to redeem a simple mortgage, the expression "recovery of the property mortgaged" means the reconveyance to the mortgagor of the interest which was vested in the mortgagee).

(40) *Pirbhu Narain Singh* v. *Sitaram*, 13 All. 94 (where the plaint alleged that the mortgage had been wholly satisfied by payment).

(41) *Karaman Singh* v. *Nariman Cockell*, 1 C.W.N. 670, also see, *Hemnath* v. *Wilayat Ahmad*, 117 I.C. 766=1929 Oudh 321=6 O.W.N. 491.

(42) Reference under the Court-Fees Act, 14 Mad. 480, *Zamorin of Calicut* v. *Surya Narayan Bhatta*, 5 Mad. 284, etc.

(43) *Silapani* v. *Ashtamurti Nambudri*, 3 Mad. 382, *Rameshwara Raji* v. *Khadar*, 16 Mad. 415, and *Kona Panikkar* v. *Karunakara*, 16 Mad. 328.

(44) *Pirbhu Narain Singh* v. *Sitaram*, 13 All. 94=(1890) A.W.N. 231, *Dhiraj Singh* v. *Rajaram*, 8 I. C. 1125=6 N.L.R. 164, *Mt. Gumani* v. *Banwari*, 54 I.C. 733=22 I.C. 289, *Sangat Baksh Singh* v. *Rawat Dijdeo*, 67 I.C. 968=25 O.C. 30, *Sekharam Nair* v. *Kongot Eacharu Nair*, 3 I.C. 459=20 M.L.J. 120, Reference under Court-Fees Act, 29 Mad. 367=16 M.L.J. 287.

356. **CLAUSE (2).** Clause 2 of this paragraph applies to suits for foreclosure, *viz.*, suits to obtain an order that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property.[45]

357. **CLAUSE (3).** Clause 3 of this paragraph concerns suits on basis of a mortgage by conditional sale. A mortgage by conditional sale is defined in S. 58 (*c*) of the Transfer of Property Act.[46]

358. **(III) SCHEME OF VALUATION IN SUITS FOR REDEMPTION—Principal amount.**—The scheme of valuation of suits for redemption is according to the principal money expressed to be secured by the instrument of mortgage. The fee is to be levied on the mortgage amount, although in suits for redemption of a mortgage the amount remaining due on the mortgage may be, in one case, in excess of the principal amount, by reason of the accruing interest; and, in the other case, less than the principal sum secured by the mortgage, on account of repayments.[47] When a mortgagee is in possession of the property, S. 76 of the Transfer of Property Act provides that he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee and the receipts from the mortgaged property shall be applied first in the discharge of the interest due, and then in reduction or discharge of the mortgage-money, and the surplus if any shall be paid to the mortgagor.

359. **MORTGAGE SATISFIED BY PAYMENT.**—In a suit for redemption, where the plaint alleged that the mortgage had been wholly satisfied by payment, Sir John Edge, C.J., held in *Pirbhu Narain Singh* v. *Sitaram*,[48] that S. 7 (ix), does not make the amount of the fee to depend on the balance which the mortgagor may say is due, or on that which the mortgagee alleges to be due. Consequently, where in the suit the mortgagor claimed a decree for redemption on the allegation that the mortgage debt had been satisfied, so far as the Court-fee on the plaint was concerned, it was immaterial whether the mortgage-debt had in fact been satisfied, or whether redemption could only be had on payment of over 2 lacs. Similarly, it has been held by the NAGPUR JUDICIAL COMMISSONER'S COURT, in *Bansilal* v. *Sikku*,[49] that where plaintiff alleged that the defendants had been in possession under a usufructuary mortgage, and there was complete satisfaction, and asked for return of the mortgaged property, expressing his willingness to pay anything that might be found due from him

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(45) Section 67, Transfer of Property Act.

(46) Section 58 (*c*), "where the mortgagor ostensibly sells the mortgaged property—on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or on condition that on such payment being made the sale shall become void, or on condition that on such payment being made the buyer shall transfer the property to the seller, the transaction is called a mortgage by conditional sale, and the mortgagee a mortgagee by conditional sale."

(47) *Eacharam Patter* v. *Appu Pattar*, 19 Mad. 16.

(48) 13 All. 94.

(49) 57 I.C. 673.

without stating any amount, the value of the suit, for purposes of Court-fees, and jurisdiction, was the principal sum mentioned in the mortgage-deed. Likewise, the Punjab Chief Court has held, in *Abdur Rahim* v. *Sewa Ram*,[50] in a case of *Lekha Mukhi* mortgage, where plaintiff mortgagor sued for possession of the land mortgaged to defendant, alleging satisfaction of the mortgage debt from the produce of the land, that the suit was clearly one for redemption, falling under S. 7 (ix), of the Court-Fees Act, notwithstanding the assertion that the mortgage-debt had been discharged; and the value of the suit for purposes of Court-fees and jurisdiction was the amount of the charge on the property, and not the value of the land.

360. SURPLUS PROFITS.—It has been held, by the Allahabad High Court, in *Hussaini Khanam* v. *Hussain Khan*,[1] that in a suit for redemption where the plaint alleges a surplus due to the mortgagor on accounts of a usufructuary mortgage, which the plaintiffs ask should be paid to them, the Court-fee is to be levied under S. 7 (ix), of the Court-Fees Act, valued at the principal amount secured by the mortgage. It was observed that "the mere fact that the plaintiffs claimed in the suit payment of any sum which might be found to be due to them on the taking of the accounts, a relief to which they would be entitled under the ordinary decree for redemption, did not alter the nature of the suit so as to necessitate the payment of an additional fee". The same has been held in *Chhidu Singh* v. *Thanjhanrai*,[2] where it was held that in a suit brought for redemption, where a certain amount is claimed as surplus mesne profits, the plaintiff is not bound to pay Court-fees upon the surplus amount claimed in addition to the Court-fee on the principal amount secured by the mortgage. The Nagpur Judicial Commissioner's Court has held in *Wajdi Begam* v. *Abdul Ghani*,[3] that for a relief which is the outcome of a statutory provision no Court-fee is payable; and, consequently as the surplus may be decreed under the provisions of O. 37, R. 7, Civil Procedure Code, it cannot be charged separately for Court-fee purposes.

361. KANOM MORTGAGES.—(1) Definition of kanom mortgages.—A "kanom", means the transfer for a consideration in money, or in kind, or in both, by a landlord of an interest in

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(50) 73 P.R. 1899.

(1) 29 All. 471=4 A.L.J. 375=(1907) 27 A.W.N. 1933.

(2) 79 I.C. 303=45 All. 154=1923 All. 261, also see 80 I.C. 1021 (S.C.). Compare, 1926 Mad. 764=50 M.L.J. 493.

(3) 1929 Nag. 1=113 I.C. 34=24 N.L.R. 197=11 N.L.J. 232, followed *Gopikisher* v. *Sorabjee*, (68 I.C. 226=1922 Nag. 259); and *Daulat Ram* v. *Gulab Chand* (76 I.C. 131=1924 Nag. 346), where it was held that when in a suit for redemption surplus profits are also claimed, for a definite sum of money, though mentioned only tentatively as the amount due, Court-fee need be paid only on the principal amount due, and not on the profits claimed. *Also* see, *Pothamma* v. *Satyanandacharlu*, 132 I. C. 317=1931 Mad. 479=60 M.L.J. 698=33 L.W. 785 (where the Madras Court has also fallen in line with Allahabad view in 29 All. 471 and 45 All. 154).

specific immoveable property to another, (called *kanomdar*) for the latter's enjoyment.[4] A *kanom* mortgage, in Malabar, is not purely a mortgage, but it is also a lease.[5]

(2) REDEMPTION AND CLAIM FOR ARREARS OF RENT.—In *Zamorin of Calicut* v. *Surya Narayana*,[6] a Full Bench of the Madras High Court observed that the language of Cl. ix of S.7, Court-Fees, is precise "PRINCIPAL AMOUNT EXPRESSLY SECURED. It does not calculate arrears of interest, if any, nor does it calculate any improvements. For the purposes of Court-fees a fixed line is drawn", and they did not see any reason why the same guiding line should not be adopted for jurisdiction in the Civil Courts Act. In a *Reference under the Court-Fees Act, S.* 5[7] where the question for decision was the Court-fees leviable in a suit to redeem a mortgage, and to recover arrears of rent due by the mortgagee to the mortgagor on account of the mortgaged property, it was held by Sir Arthur J. H. Collins, C.J., that "the language of Sub-S. IX, of S. 7, of the Court-Fees Act, is clear and unambiguous, and according to it institution fee is payable on the principal money expressed to be secured by the instrument of mortgage. The intention it suggests is to make the principal money so secured the criterion of the value of a suit for redemption". He added, that "it may be that the legislature did so provide because the amount actually due by the mortgagor to the mortgagee must be a matter of account to be taken in the suit and therefore uncertain at the date of its institution".[8] And, it is possible that the original debt may have been considerably reduced by payments, but "the Court-fees Act is a fiscal enactment, and when the words are plain, the Courts must give effect to them and are not at liberty to vary the construction with reference to any real or supposed hardship." Accordingly, it was held that THE INSTITUTION FEE MUST BE COMPUTED ON THE KANOM DEBT AS IT ORIGINALLY STOOD, and not on so much of it as was actually due at the date of suit after setting off against it arrears or rent.[9]

(3) REDEMPTION COUPLED WITH OTHER RELIEFS.—In every *kanom* document there are two distinct contracts by the tenant, *viz.*, (1) to surrender the property to the landlord after a stated period, and (2) to pay a stipulated rent to the landlord annually. The landlord is thus at liberty to seek a relief on either or both of these stipulations.[10] Where a relief in respect of rent is sought independently of the claim for redemption, the former is treated as a separate money-claim. But, where the mortgagor sues a *kanomdar* for redemption, and also claims arrears of rent, not

(4) Section 3 (*l*) The Malabar Tenancy Act (Madras Act XIV of 1930).

(5) *Silapani* v. *Ashtamurti*, 3 Mad. 382.

(6) 5 Mad. 284, F.B., also see *Govindan Nayar* v. *K. Ithalithy*, 1926 Mad. 764=50 M.L.J. 493.

(7) 14 Mad. 480.

(8) *Ibid.* 14 Mad. 480.

(9) *Ibid.* 14 Mad. 480.

(10) *Rameshwara Raja* v. *Khadar*, 16 Mad. 415.

intended to be set off against the mortgage-debt, he should pay Court-fee on any rent that he might claim, as these reliefs constitute two distinct causes of action within the meaning of S. 17 of the Court-Fees Act, and separate Court-fee is payable on each of the reliefs. It was held by Sundara Ayyar, J., in *Kodi Kenkoba Row* v. *Suryanarayana*, that all suits merely to redeem mortgages, without praying for any additional relief against the mortgagee come under S. 7 (x), of the Act;[11] but, it was doubted whether it would be right to hold that if there is any prayer for payment of money in addition to recovery of possession, that prayer need not be separately valued and Court-fee paid on the value put.[12]

(4) PAYMENTS IN KIND.—However, it has been held in *Sreedharan Nambudri* v. *V. K. M. P. Perumbra Nair*,[13] that a suit for redemption of a *kanom* and *puran kadam*, in Malabar Districts, wherein paddy valued at a certain price is fixed at the amount of *puran gadam*, is governed by S. 7 (ix), of the Court-Fees Act, and the Court-fee is to be paid according to the principal money expressed to be secured by the instrument of mortgage, and not on the market-value of the paddy on the date of the plaint.

(5) DAMAGES SOUGHT TO BE SET OFF.—The question of arrears of rent or improvements payable under terms of a *kanom* mortgage. It was held in *Govindan Nair* v. *Kanhirathotikayil*,[14] that where plaintiff suing for redemption of a *kanom* also prays for deduction of certain amount claimed as damages, Court-fee shall be paid on amount of *kanom* as well as *ad valorem* fee on the amount of the damages. This judgment was reviewed on the ground that damages are in pari materia with improvements, and this was so held by Spencer, J., *Abdulla Koya* v. *Kollumpurath Kanaran*.[15] Accordingly, it was held that when plaintiff sues for redemption of *kanom*, and also prays for a deduction of certain amount claimed as damages, he is entitled to pay the Court-fees after the amount recoverable, by way of damages, has been

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(11) *Kona Panikkar* v. *Karunakara*, 16 Mad. 328, and *Rameshwara Raja* v. *Khadar*, 16 Mad. 415, *supra*, also see *Kodi Kenkoba Row* v. *Suryanarayana*, 12 M.L.J. 493, per Sundra Ayyar, J., holding that a kanom mortgage does not include any claim for rent based on the transaction as a lease, also see.

(12) 12 M.L.J. 493=17 I.C. 442 (443). (*Held*, that where a mortgagor also prays for the payment to him of the amount found due to him on taking accounts, after the discharge of the mortgage-debt, he should state the amount so claimed and pay additional Court-fee thereon).

(13) 1925 Mad. 1254=91 I.C. 81=22 M.L.W. 408=1925 M.W.N. 747.

(14) 94 I.C. 557=1926 Mad. 542=50 M.L.J. 213. (*Cf. Eacharan Pattar* v. *Appu Pattar*, 19 Mad. 16, a question of taking an account of rents due on the original contract; and *Cf.* 14 Mad. 480—a question of rents; also, *Cf. Zamorin of Calicut* v. *Suryanarayana*, 5 Mad. 284 (F.B.)—a question of improvements). See 1926 Mad. 764=50 M.L.J. 493.

(15) 43 I.C. 6=33 M.L.J. 463=1917 M.W.N. 822=6 L.W. 696. (*Held*, that the words "any sum of money accruing due for rent or otherwise in respect of the tenancy" in S. 6 (3), Madras Act I of 1900, are wide enough to include damages.

ascertained and set off against the amount payable by way of improvements.[16]

(6) SURPLUS AMOUNT CLAIMED SEPARATELY CHARGEABLE.—According to this view, separate fee would be payable on the surplus claimed, though the plaintiffs are not bound to pay any Court-fee at the institution of the plaint, on the amount of damages which they want to be set off against the *kanom* amount, or the amount payable by way of improvements, till after it is ascertained, and a set off is allowed. The same rule would apply to surplus rent claimed after setting off against and deducting from the *kanom* amount.[17] But, the Madras High Court has recently considered 12 M.L.J. 493 in *Pothanna* v. *Satyananda Charlu*, and following the Allahabad view in 29 All. 471, and 45 All. 154, it has been held that where in a suit for redemption of a usufructuary mortgage, the mortgagor seeks to recover not only the *corpus* of the property but also the surplus profits which accrued therefrom, and which were realised by the mortgagee in excess of what was due to him, the suit may be deemed to be one for the recovery of mortgaged property within the meaning of S. 7 (ix), of the Act: and no Court-fee is to be paid on the amount of surplus profits sought to be recovered.[18]

362. **TITLE IN DISPUTE.**—Where the question litigated is the plaintiff's right to redeem, it is immaterial that he refers to his title, and the reference to title in the plaint does not make it obligatory on the plaintiff to pay any additional Court-fee.[19] Where in a suit for redemption, wider issues of title and adverse possession are raised by the pleadings, these questions being only incidental to the main relief claimed in the plaint, have not to be valued for purposes of Court-fees or jurisdiction.[20]

363. **REDEMPTION OF PART OF MORTGAGED PROPERTY.**—In cases in which it is competent to the mortgagor to sue to recover a portion of the mortgaged property, the debt must be regarded as distributed over the whole property, and, as regards the portion of the property sued for, "the principal money expressed to be secured" must be taken to be the proportionate amount of the debt for which such portion of the property is liable.[21] A Full Bench of the Allahabad High Court has held in *Amanat Begam* v. *Bhajan Lal*,[22] that where the defendant-mortgagees had broken up the mortgage, and so by their own act

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(16) 1926 Mad. 764=50 M.L.J. 493.

(17) *Satyamurthi Ayyar*, p. 149, also see *Kodi Venkatappa Row* v. *Suryanarayana*, 17 I.C. 442=12 M.L.T. 493, and *Vasudeva* v. *Madhava*, 16 Mad. 326. (Redemption after taking accounts).

(18) Compare, 132 I.C. 317=1931 Mad. 479=60 M.L.J. 698.

(19) (*Kavalappara*) *Moopil Nair* v. *Ammalu Amma*, 1926 Mad. 667 =95 I.C. 126=23 M.L.W. 758=1926 M.W.N. 324, right to redeem to be established against the mortgagee and a rival claimant.

(20) *Shanker Baksh Singh* v. *Raw Bahadur Singh*, 70 I.C. 311= 1922 Oudh 45.

(21) *Balkrishna Dhondo* v. *Nagvekar*, 6 Bom. 324, per Melvill, J.

(22) 8 All. 438 (F.B.)=6 A.W.N. (1886), 146.

had empowered the plaintiff to sue for redemption of one-third of the property, that the principal money now secured as between them and the plaintiff must be regarded as one-third of the original mortgage amount. This view was taken on the ground that fiscal enactments should, as far as possible, be construed in favour of the subject. The ruling of Melwill, J., in *Balkrishna Dhondo* v. *Nagnekar*, adopting the same principle was approved.[23] In *Vasudeva* v. *Madhava*, the plaintiff had claimed to redeem certain land on payment of a quarter of the debt for which it had been mortgaged together with other land, and *ad valorem* Court-fee was computed on one-fourth of the mortgage-debt.[24] A person interested in part only of the mortgage-money may institute a suit to recover his share of the mortgage money only by framing a suit to relate to the whole of the mortgaged property and in a suit so framed, plaintiff need pay Court-fee only upon his share of the mortgage-money.[25]

364. REDEMPTION BY A CO-MORTGAGOR.—Where a co-mortgagor who is entitled to redeem a share of the mortgaged property sues for redemption, the Court-fee payable is to be calculated on the amount of the mortgage debt which is chargeable on the share which the plaintiff is entitled to redeem.[26] This view of the law has been accepted in Allahabad, Bombay and Madras High Courts.[27] The Oudh Judicial Commissioner's Court has also held that a suit, not between co-mortgagors, but between persons claiming a mutually exclusive right to redeem a mortgage, one of whom has succeeded in inducing the mortgagee to allow him to redeem while the other sues seeking to enforce his right of redemption against the mortgagee and the person who is said to have redeemed the mortgage without any right, is in nature one for redemption, and its value for purposes of Court-fees, and jurisdiction is determined by the amount of mortgage-money, and not by the value of the mortgaged property.[28]

365. REDEMPTION AS CONSEQUENTIAL RELIEF.—A claim for redemption would, however, be liable to be stamped with *ad valorem* Court-fee on the value of properties, where this claim can be regarded as a consequential relief merely in a suit for declaration of title.[29]

366. III, (B) VALUATION FOR JURISDICTION—(1) General observations.—Under S. 8, Suits Valuation Act, a suit

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(23) See F. N. (21) above.

(24) 16 Mad. 326, also see F.N. 26 below.

(25) *Bansiram Jashamal* v. *Gunnia Naga Ayyar*, 129 I.C. 45=1930 Mad. 985.

(26) *Bhairon Baksh Singh* v. *Raghubansa Kunwar*, 45 I.C. 300 (303) =5 O.L.J. 43.

(27) *Vasudeva* v. *Madhava*, 16 Mad. 326; *Amanat Begam* v. *Bhajair Lal*, 8 All. 438=(1886) A.W.N., 146; and, *Balkrishna Dhondo* v. *Nagvekar*, 6 Bom. 324. See F.N. 21, 22, 23 and 24, above.

(28) *Shanker Baksh Singh* v. *Ram Bahadur Singh*, 70 I.C. 311=1922 Oudh 45.

(29) *Brij Krishna Das* v. *Murli Ray*, 4 Pat. L.J. 703=56 I.C. 316.

for redemption or foreclosure need not bear the same value for jurisdiction as for Court-fee. But the Suits Valuation Act has not fixed any method of valuing such suits, nor has it apparently enabled such a method to be prescribed by rule, and on general principles, some High Courts hold that the valuation for jurisdiction in suits for redemption is the same as the value for Court-fee. Another view is that the rules contained in the Court-Fees Act are not to be taken as necessarily a guide in determining the value of the subject-matter of a suit for purposes of jurisdiction, and the valuation for jurisdiction is the amount actually due under the mortgage. Another view is that the value of property mortgaged affords the test of the value of a suit for redemption for purposes of jurisdiction. The Civil Courts Act of different provinces indicate the value for jurisdiction as depending either on the amount of mortgage debt, or the amount due on the mortgage, or the market-value of the property mortgaged as the case may be.

367. (2) Allahabad.—AMOUNT OF THE PRINCIPAL DEBT: In *Kubair Singh* v. *Atma Ram*,[30] the Allahabad High Court held that in a suit for redemption, the value of the subject-matter for purposes of jurisdiction is not the market-value of land, but the amount of the mortgage-money. A similar view was taken in *Amanat Begam* v. *Bhajanlal*,[31] where the plaintiff is entitled to come into Court to redeem a portion of mortgage, "the subject-matter in dispute" with reference to the terms of S. 20, of the Bengal Civil Courts Act (VI of 1871) was taken to mean the mortgagee's subsisting interest which the plaintiff redeeming seeks to clear off, and the limits of the pecuniary jurisdiction of the Court to entertain the suit were held to be fixed with reference to the proportionate amount of the mortgage debt sought to be paid off. Both these cases were prior to the passing of the Suits Valuation Act, 1887. S. 8 of that Act no doubt provides that a suit falling under S. 7 (ix), of the Court-Fees Act, is one of the excepted suits in which the value for purposes of Court-fees and jurisdiction need not be the same; but, the Suits Valuation Act does not prescribe what is to be taken as the value of a suit for redemption; consequently, it was held in *Kedar Singh* v. *Matabdal Singh*[32] that S. 8. of the Suits Valuation Act does not affect the previous rulings referred above.

368. (3) Bombay.—AMOUNT DUE ON THE MORTGAGE. The Bombay High Court, held in *Rupchand Khemchand* v. *Balvant Narayan*[33] that the valuation of the subject-matter of the suit for redemption must be taken as the amount which is due on the

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(30) 5 All. 332=3 A.W.N. (1883) 47.

(31) 8 All. 438=6 A.W.N. (1886), 146 (F.B).

(32) 1 I.C. 703=31 All. 44=1908 A.W.N. 276=5 A.L.J. 713. (*Held*, that where a plaintiff sues for redemption upon payment of a certain sum, an ancillary claim that an account be taken, and any amount found due to, or by one of the parties be awarded to the party to whom it is due, does not alter the nature of the suit, and does not increase its value).

(33) 11 Bom. 591 (594, 595).

mortgage and which must be paid for the recovery of possession of the property. It was observed by Birdwood, J., that "under the Court-Fees Act, the valuation of such a suit is estimated according to the principal money expressed to be secured by the instrument of mortgage; but the rules contained in that Act are not to be taken as necessarily a guide in determining the value of the subject-matter of a suit for any purposes for which the Act does not provide; as, for example, for purposes of jurisdiction."[34] This view has been followed in *Amrita Bin Bapuji* v. *Naru Bin Gopalji*,[35] where it was held that in a redemption suit the valuation of the subject-matter does not depend on the value of the mortgaged property. "Where the mortgage itself is denied, and the mortgagee does not say what he claims in respect of the mortgage-debt, the amount found to be remaining due on the mortgage, if any amount was due at the time when the suit was filed, would represent the true valuation of the subject-matter of the suit."[36] In a suit upon a mortgage, where the sum really due is at the time an unknown quantity, the amount of the mortgage the rights connected with which are the subject of contention in a mortgage suit may be taken to determine the value of the subject-matter.[37]

369. (4) Calcutta.—AMOUNT DUE UNDER DECREE. It was observed by the Calcutta High Court in *Sarada Sundari Basu* v. *Akramaunessa Khatun*,[38] that a redemption suit comes under S. 7 (ix) of the Court-Fees Act, and the plaint has to be stamped with Court-fees payable on the principal sum assured. But S. 8 of the Suits Valuation Act does contemplate a change in law, for redemption suits have been expressly excluded from the operation of S. 8 of the Suits Valuation Act. The view taken, therefore, was that jurisdiction will depend not on the amount assured but on the amount ultimately found to be due.

370. (5) Madras.—AMOUNT OF PRINCIPAL DEBT. The Full Bench of Madras High Court, in *Zamorin of Calicut* v. *Surya Narayana Bhatta*[39] observed that "for the purposes of Court-Fees Act, a fixed line is drawn," and they "did not see why the same guide line should not be adopted for the jurisdiction in the Civil Courts Act." Accordingly it was held by the majority that where an instrument of mortgage does not expressly secure the amount to be allowed for improvements on redemption of the mortgage, the value of the improvements is not to be calculated in ascertaining

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(34) 11 Bom. 591 (595) referring to *Bai Mahkor* v. *Bulakhi Chaku*, 1 Bom. 538. (*Held*, that the law may lay down, for purposes of revenue certain rules for the Valuation of Suits; but such valuation cannot be accepted as a criterion of the actual amount or value of the claim, upon which the jurisdiction of a Court depends).

(35) 13 Bom. 489.

(36) 13 Bom. 491 (492), *supra*, citing *Rupchand Khenchand* v. *Balvant Narayan*, 11 Bom. 591.

(37) *Ramchandra Baba Sathe* v. *Janardhan Apaji*, 14 Bom. 19 (23), citing *Rupchand Khemchand* v. *Balvant Narayan*, 11 Bom. 591, *supra*.

(38) 78 I.C. 747=51 Cal. 737=1924 Cal. 783=28 C.W.N. 710.

(39) 5 Mad. 284 (F.B.).

the "value of the subject-matter of the suit," for the purposes of jurisdiction under S. 12 of the Madras Civil Courts Act. The Madras High Court observed in *Mahamad Jallalden* v. *Vijayaswami*,[40] that the Suits Valuation Act has not fixed any method of valuing suits to redeem a mortgage, nor has it apparently enabled such a method to be prescribed by rule. Consequently, in such suits it is the amount of the principal debt that should be taken into account in determining the jurisdiction under the Civil Courts Act. For the same reasoning, it has been held in *Sreedharan Nambudri* v. *Vattakkavil Kulangaru*,[41] that the authority of *Zamorin of Calicut* v. *Surya Narayana Bhatta*,[22] remains unaffected, by the passing of Suits Valuation Act.

371. Punjab.—AMOUNT OF CHARGE DECREED. A Full Bench of the Punjab Chief Court, in *Mt. Rajo* v. *Dasu*,[43] held that the value of the subject-matter of the suit for redemption of mortgage is the amount of the charge on the property, and not the value of the property. A later Full Bench Ruling in *Muhammad Khan* v. *Ashak Muhammad Khan*,[44] held that a suit for redemption of immoveable property falls under S. 7 (ix), of the Court-Fees Act, and is, therefore, not a class of suit the value of which can be determined under S. 3 of the Suits Valuation Act. This Full Bench judgment affirms three propositions; *first*, that in a redemption suit, the value of the suit is the amount of the charge on the property; *second*, the value of the suit as stated in the plaint cannot be altered by the plea of the defendant, whether it be true or false; *third*, that the jurisdiction is to be determined with reference to the claim made, and not to the decision upon it.[45] In *Mohan* v. *Dialu*, Williams, J., held that in redemption suits, the value for purposes of jurisdiction is the charge on the property, and in S. 7 (ix), of the Court-Fees Act, the fee in such a case is according to the principal money expressed to be secured by the instrument of mortgage. Therefore, the value of the claim was determined by the judicial hypothec unaffected by the alleged improvements by the mortgagee.[46] A Full Bench of the Lahore High Court, has reviewed the case law in *Jaswant Ram* v. *Moti Ram*,[47] where it was held differing from the Allahabad[48] and

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(40) 28 I.C. 624=39 Mad. 447=1915 M.W.N. 239=29 M.L.J. 142.

(41) 91 I.C. 81=1925 Mad. 1254=22 L.W. 408=1925 M.W.N. 747.

(42) 5 Mad. 284 F.B. (F.N. 39, *supra*).

(43) 44 P.R. 1888 (F.B.) O.R. 82 P.R. 1882 and 185 P.R. 1882, where the test of jurisdiction was taken to be the value of the property sought to be redeemed).

(44) 106 P.R. 1895 F.B.

(45) *Fateh Chand* v. *Mt. Jowahar Dei*, 72 I.C. 405=1923 Lah. 568=5 L.L.J. 143.

(46) 178 P.W.R. 1909.

(47) 96 I.C. 890 (F.B.)=1926 Lah. 376 (F.B.)=27 P.L.R. 605=7 Lah. 570 (F.B.)—(Sir Shadilal, C. J. Broadway, Harrison, Fforde and Campbell, JJ.).

(48) *Kedar Singh* v. *Matabadil Singh*, 1 I.C. 703=31 All. 44=(1908) A.W.N. 276=5 A.L.J. 713. (See F.N. 32, *ante*).

Madras[49] High Courts, that while the Court-Fees Act contains an express direction that the Court-fees in a suit for redemption must be computed on the principal mortgage-money, there is no legislative authority for treating the amount of the principal mortgage-money as the basis of the value for jurisdiction. "Indeed there appears to be a clear indication to the contrary." The Legislature has expressly excluded the suits for redemption from the category of those suits in which the value for jurisdiction is assimilated to that for the levy of Court-fees. It was observed that "the result is that there is no special rule governing the valuation of a suit for redemption, and in the absence of such a rule, we must act upon the general rule that the valuation of a suit must follow the value of the subject-matter thereof. And the value of the subject-matter of a redemption suit is the amount of the mortgagee's charge on the property mortgaged to him." The Full Bench, held further, that "*in a suit for redemption of immoveable property the value for purposes of jurisdiction is the amount found by the Court to be the value of the Mortgagee's charge on the property, and not the amount alleged by the plaintiff to be due to the mortgagee.*"[50]

372. (7) Rangoon.—THE VALUE OF PROPERTY MORTGAGED. The RANGOON HIGH COURT has held that for the purposes of pecuniary jurisdiction the value of a subject-matter of a suit for redemption and recovery of land held by a mortgagee under a possessory mortgage is the value of the property sought to be recovered.[1] The practice of this Court is laid down in the Rules as follows:—"The valuation of suits and appeals shall be determined according to the rules laid down in the Court-Fees Act, provided that in cases falling within S. 7, (v) (vi), (ix) and (x) (*d*) of the said Act the value of the property shall be taken." It was observed that S. 8 of the Suits Valuation Act excludes such suits from the category of suits in which the value for purposes of Court-fees and jurisdiction shall be the same, but does not say what is to be the valuation of suits under S. 7, (ix) for purposes of jurisdiction; and that it was not the intention of the legislature that the mortgage-money should be the basis of the valuation for purposes of jurisdiction.

373. (8) Nagpur.—AMOUNT OF PRINCIPAL. The Nagpur Court has held in *Wajidi Begum* v. *Abdul Ghani*[2] that the value of a suit for redemption, when surplus profits are also claimed, for jurisdiction and Court-fees is the same, *viz.*, the principal expressed in the instrument of the mortgage. The referring

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(49) *Mahammad Jellaldeen* v. *Vijayaswami*, 28 I.C. 624=39 Mad. 447=1915 M.W.N. 239=29 M.L.J. 142. (See F.N. 40, *ante*).

(50) 96 I.C. 890 (892) F.B.=1926 Lah. 376 (F.B.)=7 Lah. 570 (F.B.)=27 P.L.R. 605, *supra*.

(1) *Ma Hla Saimg* v. *Ma Su We*, 1927 Rang. 304=105 I.C. 412 (citing *Maung Kyaw Dun* v. *Maung Kyaw*, 1 L.B.R. 96, and the *Obiter dictum in Kalee Kumar Nag* v. *Mayappa Chetty*, 8 I.C. 973=5 L.B.R. 208).

(2) 113 I.C. 34=1929 Nag. 1=24 N.L.R. 197=11 N.L.J. 232.

order notes that the Nagpur Court has in *Gopikishan* v. *Sorabjee*[3] followed the well-known Allahabad case of *Husaini Khanam* v. *Husain Khain*,[4] where it was alleged that no additional Court-fee need be paid on the surplus profits claimed in the plaint, and, that, the view taken by Baker, J. C., in *Daulat Ram* v. *Gulabchand*[5] is to the same effect as that taken in the Allahabad case of *Chhuddu Singh* v. *Jhanjhan Rai*,[6] and that where a definite amount is claimed as surplus profits, the plaintiff is not bound to pay Court-fee upon the surplus amount claimed in addition to the Court-fee on the principal amount secured by the mortgage. The referring order in *Wajidi Begum* v. *Abdulgham*,[7] points out that the Civil Procedure Code (O. 34, Rr. 7, 8, 9) gives a statutory jurisdiction to the Court to pass a decree for the surplus, and, ordinarily, for a relief which is an outcome of a statutory provision, no Court-fee is payable. It was held in *Bansilala* v. *Sitku*,[8] that where a plaintiff sues to redeem a mortgage alleging complete satisfaction and asking for return of the mortgaged property and expressing his willingness to pay anything that might be found due from him without stating any amount, the value of the suit for the purpose of deciding the jurisdiction and also the amount of the Court-fees is the principal sum mentioned in the mortgage-deed.

374. (9) SUMMARY.—In ALLAHABAD,[9] MADRAS[10] AND NAGPUR,[11] the amount of the principal debt; in BOMBAY,[12] the amount due on the mortgage; in CALCUTTA[13] AND LAHORE,[14] the amount found due by the Court's decree; and in RANGOON,[15] the value of the property, determine jurisdiction of Courts, in the absence of any direction in the Suits Valuation Act.

375. III. (C) VALUTION IN APPEALS.—Application of paragraph to suits or appeals. There is a conflict of view on the question whether paragraph (ix) of S. 7, Court-Fees Act, is confined to suits only, or applies to appeals as well.

376. (1) Allahabad.—It was held in *Nepal Rai* v. *Debi Prasad*,[16] by Sir John Stanley, C.J., that S. 7 (ix) is confined to

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(3) 68 I.C. 226=1922 Nag. 259.
(4) 29 All 471=A.W.N. (1907) 133=4 A.L.J. 375.
(5) 76 I.C. 131=1924 Nag. 346.
(6) 79 I.C. 303=45 All. 154.
(7) 113 I.C. 34=1929 Nag. 1=24 N.L.R. 197=11 N.L.J. 232.
(8) 57 I.C. 673.
(9) 31 All. 44 (F.N. 32).
(10) 5 Mad. 284 F.B. (F.N. 39), and 91 I.C. 81=1925 Mad. 1254 (F.N. 41).
(11) 1929 Nag. 1.
(12) 11 Bom. 591 (F.N. 33), and 13 Bom. 491 (F.N. 36).
(13) 51 Cal. 737=78 I.C. 747=1924 Cal. 783 (F.N. 38).
(14) 7 Lah. 570=96 I.C. 890=1926 Lah. 376 F.B. (F.N. 47).
(15) 1927 Rang. 304=105 I.C. 412 (F.N. 1).
(16) 27 All. 447.

a suit apparently, and does not apply to an appeal; and, that where in a suit for redemption of a mortgage, the palintiff obtained a decree for redemption conditional on the payment by him of a sum fixed by the decree, and the plaintiff appealed upon the ground that such sum was in excess by a specified amount of the sum rightly payable by him for redemption, the Court-fee payable on the memorandum of appeal was to be calculated according to the sum which the appellant claimed to have deducted, from his decree, and not, as in the case of a suit for redemption, according to the principal sum secured by the mortgage.[17] This was followed in *Mahadeo Prasad* v. *Gorakh Prasad*,[18] where it was held that in the case of an appeal from a decree allowing a defendant-mortgagor to redeem the mortgage on payment of a sum named therein based upon the ground that the mortgage-debt has been satisfied out of the usufruct of the property mortgaged and nothing whatever was due from him, the proper Court-fee payable was an *ad valorem* fee upon the total amount of the decree under appeal. In *Raghubir Parsad* v. *Shankar*,[19] it was held by a Full Bench of the Allahabad High Court, modifying the rule in *Baldeo* v. *Kalka Prasad*,[20] that the provision of paying Court-fee on the principal money is confined to suits and, that in the case of an appeal, the Court-fee payable is an *ad valorem* Court-fee on the value of the subject-matter of the appeal, under Art. 1, Sch. I, of the Court-Fees Act, and that, therefore, "in all cases in which the amount declared by the Court to be due at the date of the decree can be ascertained by reference to the judgment and the decree, it is that amount at which the appeal or cross-objections should be valued, and future interest should not be taken into account." This was followed in *Prag* v. *Bhagwan Din*.[21]

377. (2) Madras.—The Madras High Court has taken the same view in a Reference under the Court-Fees Act[22] where *Nepal Rai* v. *Debi Prasad*[23], was followed, and the opposite view taken by the Bombay High Court, in *Umarkhain* v. *Mahomed Khain*,[24] was not followed. The Madras High Court observed in

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(17) 27 All. 447=2 A.L.J. 105=(1905) A.W.N. 40, *supra*.

(18) 30 All. 547=(1908) A.W.N. 247.

(19) 36 All. 40=21 I.C. 723 (724)=11 A.L.J. 1016.

(20) 35 All. 94=18 I.C. 365=11 A.L.J. 20. (*Held*, that on appeal by one of the defendants, whose property was held liable for specific sums of money, that the proper Court fee payable on appeal was a fee calculated on the sum of money for which the defendant's property was held liable, and not one calculated on the full amount of the decree).

(21) 1925 All. 734=47 All. 926=88 I.C. 888=23 A.L.J. 853. (In an appeal, from order dismissing a suit for foreclosure, Court-fee payable *ad valorem* on the value of the subject-matter of the appeal, under Art. 1, Sch. I, to the Act), also see *Nirman Singh* v. *Shyam Narain*, 127 I.C. 32 =1930 Oudh 329=7 O.W.N. 585. (*Held*, that in the case of appeals or cross objections in suits for redemption or foreclosure the appellant need not pay Court-fee on future interest).

(22) 29 Mad. 367=16 M.L.J. 287.

(23) 27 All. 447 (F.N. 17, *supra*).

(24) 10 Bom. 41 (45).

Sekharan Nair v. *Eacharan Nair*,[25] that in a suit for redemption the value of the subject-matter in dispute is the principal money, according to S. 7 (ix) of the Act, from which it was inferred that "for the purposes of the Court-Fees Act the subject-matter in dispute in a redemption suit is the existence of the right to redeem, any question as to the amount payable as the condition of redemption being regarded merely incidental to that right." Even where the plaintiff on appeal is urging his right to redeem, and also contesting the finding as to the amount payable, the nature of the suit in appeal is in no way altered, and "the subject-matter in the case of appeal memorandum is to be valued as in the case of the plaint. Similarly in the case of an appeal by the defendant-appellant, where the existence of the right to redeem, and the question of amount payable arises for decision. The *obiter diction* was thrown out that where in the appeal by plaintiff or defendant against a decree in a redemption suit the only question is as to the amount payable, the subject-matter in dispute is a definite amount, on which Court-fee is to be computed under Art. 1, Sch. I, of the Act. "This result is the same as that arrived at in the Reference under Court-Fees Act."[26] In *in re Porkadi Achi*,[27] the principle was enunciated "that the value of an appeal is not in all cases the value of the suit as originally filed, but the value of the relief granted by the decree which a party wishes to get rid of. "In *Nellyoton Poidol Nair* v. *Surp*, where in a suit for redemption of a kanom, the plaintiff obtained a decree for recovery of possession of property, subject to the payment of the *kanom* amount and the value of improvements, and the plaintiff appealed only against the value allowed for improvements it was held that the proper Court-fee payable on appeal must be determined in accordance with the value of improvements which the party seeks to avoid.[28] In *Pathumma Umma* v. *Aliyammakkanakath Mohideen*,[29] it was held that parties can avail of camouflage of law if any, and the effect of case-law was that the actual decision in 23 Mad. 84, (apart from its *obiter dictum* as to question of fee payable on improvements) has never been overruled and accordingly, where a defendant disputes on appeal both the plaintiff's title to recover and the amount of compensation to be awarded, he need pay Court-fee only as on a suit for recovery of possession.[30]

378. **(3) Nagpur.**—The Nagpur Court has held in *Dhiraj Singh* v. *Raja Ram*,[31] that Sch. I does not enact anything except the percentage of Court-fee. It does not stand by itself, but as a

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(25) 3 I.C. 459=20 M.L.J. 121.

(26) 29 Mad. 367=16 M.L.J. 287, ref. in 3 I.C. 459 (460).

(27) 45 Mad. 246=1922 Mad. 211=68 I.C. 444.

(28) 1926 Mad. 225=92 I.C. 624=22 M.L.W. 691=1926 M.W.N. 169.

(29) 1928 Mad. 929 (932)=110 I.C. 752.

(30) *Reference under Court-Fees Act, S.* 5, 23 Mad. 84 (reld. on 1928 Mad. 929=110 I.C. 752).

(31) 8 I.C. 1125=6 N.L.R. 164.

supplement to S. 7, and other sections of the Act. S. 7 states the various processes by which values in different suits are to be arrived at, and the schedule then applies the proper Court-fees to those values. The general purpose of S. 7, it is explained, is to lay down a value that should remain unchanged in all stages of a case. It would have been superfluous, and in a way redundant, to have added words "and appeals" to the words "in suits," with which each of the eleven clauses of S. 7, begins, because once the value of a relief has been ascertained for the purpose of the plaint, the first schedule forthwith rates the relief at the same value for the purpose of appeal. Accordingly, S. 7 (ix) of the Act, has to be read with Sch. I, of the Court-Fees Act. The general rule governing appeals against mortgage decrees is that Court-fee is payable on amount by which appellant wants to reduce or enhance decree. If the appeal is merely for revising the decree of the trial Court and no question of accounting arises, then the Court-fees payable in appeal should be the same as the Court-fee payable on the plaint in the suit.[32]

379. (4) Oudh.—The Oudh Judicial Commissioner's Court point out, in *Mt. Gumani* v. *Banwari*,[33] that the term "*suit*" is nowhere used in the Court-Fees Act in contradistinction to the term "*appeal.*" The terms that are used in contradistinction to one another are the words "plaint" and "memorandum of appeal" the Court-fees being chargeable on documents and not proceedings. A plaint is a document filed in one stage of the suit, and a memorandum of appeal is a document filed in another stage. A suit is the general name given to proceedings whether in original or appellate Court." "The words in Art. I, "not otherwise provided for in the Act" appear to refer to special provision made by other articles in the schedules."[34] The construction put in this case on S. 7 (ix), is that the paragraph is applicable only where the question raised by the plaint or memorandum of appeal is the right to redeem or foreclose, apart from the right to so redeem or foreclose for an adjudged sum. On this construction, in the case of memorandum of appeal, if it impugns the lower Court's decision against redemption of foreclosure, the Court-fee will be assessed according to the principal mortgage-money. If the memorandum of appeal challenges the amount to be paid, or received by the appellant, the fee will be assessed on the difference between the sum awarded (as payable or receivable) by the lower Court, and that maintained as due in the memorandum of appeal.[35] This

(32) *Vithoba* v. *Ramji*, 1931 Nag. 180.

(33) 54 I.C. 733=22 O.C. 289 (per Ashworth A.J.C.).

(34) *Ibid.* 54 I.C. 733=22 O.C. 289, also see *Sangat Baksh Singh* v. *Rawat Dijdeo Baksh Singh*, 67 I.C. 968=25 O.C. 30, and *Sant Baksh* v. *Dildar Hussain*, 74 I.C. 88=1924 Oudh 170. (*Held*, that when a mortgagee in appeal claims a larger amount than that awarded by the decree of the lower Court allowing redemption, his memorandum of appeal is chargeable with an *ad valorem* Court-fee calculated on the difference between the amount found due by the lower Court and that claimed by him in appeal).

(35) *Ibid.* 54 I.C. 732 (735)=22 I.C. 289, also see *Hiralal* v. *Mul Chand* (122 I.C. 736=1930 Lah. 601=31 P.L.R. 173), where it was held that in a suit for redemption on an appeal by the plaintiff against amount

view is analogous to that taken in *Hafiz Ahmad* v. *Sobha Ram*,[36] (a pre-emption case), where it was held that when the right to pre-empt is in question an appeal should be stamped on the value of the property as in the original suit; but, when the question in appeal relates solely to the amount to be paid by the pre-emptor, the fee should be calculated *ad valorem* on the amount actually in dispute.[37] The Oudh Court has very carefully considered the provisions of the Court-Fees Act, S. 7 (ix), and Art. 1. Sch. I, and the relevant authorities, and its conclusions have been tabulated as follows in *Sangat Baksh Singh* v. *Rawat Dijdeo Baksh Singh*.

(1) "If a suit for redemption or foreclosure has been dismissed, the Court-fee payable by the plaintiff appellant on his memorandum of appeal will be computed in accordance with the provisions of Cl. (ix) of S. 7 of the Court-Fees Act, that is, according to the principal money expressed to be secured by the instrument of mortgage". "(In such a case clearly the suit has not changed its nature in appeal.)"

(2) "If a suit to redeem has been decreed, and the defendant-appellant merely challenges the right to redeem, the Court-fees payable on the memorandum of appeal will be computed in accordance with the provisions of Cl. (ix) of S. 7, of the Court-Fees Act." ("Here again there is no change in the nature of the suit.")

(3) "If a suit to redeem or foreclose has been decreed and the plaintiff or the defendant in appeal merely challenges the amount to be paid or received without questioning the right to redeem or foreclose, the Court-fee payable on the memorandum of appeal will be on the subject-matter in dispute, that is, on the additional amount claimed or the amount in respect of which the appellant seeks to avoid liability." ("In this case the suit has clearly changed its nature in appeal, and is no longer a suit falling within the provisions of Cl. (ix) of S. 7 of the Act)".

(4) "Where in a foreclosure suit a decree has been passed for a certain sum in default of payment of which within a fixed time the property shall be foreclosed, and the defendant in appeal denies the plaintiff's right to foreclose on the ground that he is not liable to pay any portion of the sum decreed, the Court-fee payable on the memorandum of appeal will be calculated *ad valorem* on the subject-matter in dispute according to Art. 1 of Sch. I, that is, on the amount of the decree the payment of which the defendant by his appeal seeks to avoid." ("In this case the suit has clearly changed its nature in appeal and has become a suit to avoid the payment of a specific sum").[38] Thus, in all suits contemplated by S. 7 (ix) the amount of the mortgage money is the determining factor in fixing the Court-fee. The Court-fee should be according to the principal sum secured by the instrument of mortgage. These considerations do not apply to a suit for possession of immoveable property.[39]

380. (5) Patna.—The Patna High Court has held in *Rowlins* v. *Lachmi Narain Jha*,[40] that "1. "In the case of appeals

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decreed payable to the defendant, the Court-fee is payable *ad valorem* on the diminution claimed in the appeal.

(36) 6 All. 488.

(37) *Pirblu Narain Singh* v. *Sitaram*, 13 All. 94=10 A.W.N. (1890) 231.

(38) 67 I.C. 968=1922 Oudh 82=25 O.C. 30, followed in *Sant Baksh* v. *Dildar Hussain*, 74 I.C. 88=1924 Oudh 170.

(39) *Sheoran Singh* v. *Barkan Singh*, 154 I.C. 597=1931 Oudh 366 =14 O.L.J. 365=8 O.W.N. 536.

(40) 3 Pat.L.J. 443=44 I.C. 50.

or cross-objections in suits for redemption or foreclosure, in all cases in which the amount declared by the Court to be due at the date of the decree can be ascertained by reference to the judgment and the decree, it is that amount at which the appeal or cross-objection should be valued and future interest should not be taken into account."[41] "2. When the appeal against costs is distinct and separate from other parts of the appeal, Court-fees must be paid *ad valorem* on the costs decreed."

381. (6) Punjab.—The Punjab Chief Court held in *Banwari Das* v. *Nathu Shah*,[42] that Court-fee on appeals in redemption cases is payable on the value of the subject-matter in dispute in the appeal, *viz.*, the difference between the sum decreed by the lower Court and the amount claimed. This was relied upon in *Dyal Singh* v. *Ram Rakha*,[43] for holding that where in an appeal against a decree for redemption on payment of a certain sum, the whole decree is sought to be set aside, the memorandum of appeal should bear *ad valorem* Court-fee on the amount on payment of which redemption is decreed. These cases have been followed in *Chuni Lal* v. *Beli Ram*,[44] that in an appeal for reduction of mortgage-money Court-fee is payable on the value of the subject-matter in dispute. A similar view was taken by the Lahore High Court in *Lekh Ram* v. *Ramji Das*,[45] where plaintiff had asked for redemption either without payment or on receipt of what was due to him, and the Court having given him a decree on payment of a certain sum, he appealed. It was held following the previous judgments of the Punjab Chief Court,[46] supported as they were by those of the Madras[47] and Allahabad[48] High Courts, that the case was governed by Art. 1, Sch. I of the Act, and Court-fees were payable *ad valorem*, on the memorandum of appeal, on the amount by which the mortgage-money was sought to be reduced in appeal.[49] The Lahore High Court has similarly, held in *Ramji Lal* v. *Shibba*,[50] and in *Hiralal* v. *Mul Chand*,[1] that where in a suit for redemption, the plaintiff appeals *qua* the amount payable to defendant, the Court-fee is payable *ad valorem*, under

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(41) *Raghbir Prosad* v. *Shanker Baksh Singh*, 36 All. 40; and Reference under Court-Fees Act, 29 Mad. 367=16 M.L.J. 287, compare *Vithal Hari Athaval* v. *Govind Vazudeo*, 17 Bom. 41.

(42) 5 P.R. 1911=9 I.C. 676=48 P.L.R. 1911=59 P.W.R. 1911.

(43) 14 I.C. 78=54 P.R. 1912=122 P.W.R. 1912=109 P.L.R. 1912.

(44) 30 I.C. 104=58 P.R. 1915.

(45) 57 I.C. 215=1 Lah. 234=3 L.L.J. 370.

(46) *Banwari Das* v. *Nathu Shah*, 5 P.R. 1911=9 I.C. 676, *Chuni Lal* v. *Beli Ram*, 58 P.R. 1915=30 I.C. 104.

(47) *Reference under Court-Fees Act*, S. 5, 29 Mad. 367=16 M.L.J. 287.

(48) *Nepal Rai* v. *Debi Prasad*, 27 All. 447=2 A.L.J. 105=(1905) A.W.N. 40 (not approving *Pirbhu Narain Singh* v. *Sitaram*, 13 All. 94.

(49) *Lekh Ram* v. *Ramji Das*, 57 I.C. 215=1 Lah. 234=3 L.L.J. 370.

(50) 75 I.C. 667=1923 Lah. 309.

(1) 122 I.C. 736=1930 Lah. 601=31 P.L.R. 173.

Art. 1, Sch. I, of the Court-Fees Act, on the diminution claimed in appeal, *i.e.*, on the difference between the amount claimed to be payable, and the amount decreed as the price of redemption. But, in an appeal against a decree for redemption on payment of a certain amount, the Court-fee should be paid *ad valorem* on the amount of the principal mortgage-money, under S. 7, paragraph ix, of the Act.[2] The party filing the cross-objections to reduce amount decreed must, likewise, pay Court-fee calculated *ad valorem* on the sum by which he seeks to reduce the amount *decreed*.[3] Addison, J., has held in *Har Lal* v. *Siri Ram*,[4] that the Court-fee payable on a memorandum of appeal is to be computed in accordance with S. 7 (ix) of the Act, where redemption having been decreed by the lower Court, the defendant-appellant merely challenges the right to redeem; or if the suit is dismissed, the plaintiff-appellant prefers an appeal, in which case the subject-matter in appeal is the same as in the original suit. But, where a suit changes its nature in appeal, and though the original suit was for redemption, there is no question raised in appeal as to the right to redeem, and the appeal is merely in respect of the amount which the Court of first instance has held to be payable, in such a case the Court-fee would be payable, on the subject-matter of appeal, *ad valorem* in accordance with Art. 1, Sch. I of the Act. *In Abdul Aziz* v. *Rahmatullah*, it has been observed that where the defendants contest not only the finding of the lower Court as to the amount payable by the plaintiff before he could redeem the mortgage, but also the finding that the transaction was not a mortgage, the Court-fee on appeal is payable on the principal sum secured by the mortgage.[5]

382. (7) SUMMARY.—TABULATION OF RESULTS. The following results may be tabulated on a consideration of the different views prevailing in the various High Courts:—

I. An appeal, by plaintiff, against dismissal of suit for redemption, relates to the right to redeem, and Court-fee is payable on the principal amount secured by the instrument.[6]

II. An appeal, by plaintiff, relating *only* to the amount decreed payable on redemption, and praying for its reduction, is to be valued under Art. 1, Sch. I, on the deficiency claimed.[7]

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(2) *Fatteh Singh* v. *Babu Ram*, 67 I.C. 130=3 L.L.J. 156.

(3) *Mansaram* v. *Umra*, 11 I.C. 198=134 P.W.R. 1911=213 P.L.R. 1911.

(4) 134 I.C. 124=1931 Lah. 633=32 P.L.R. 591.

(5) 1933 Lah. 155.

(6) 3 I.C. 459=20 M.L.J. 121, 8 I.C. 1125=6 N.L.R. 164; 10 Bom. 41; 54 I.C. 733=22 I.C. 289; 67 I.C. 968=25 O.C. 30; 57 I.C. 215=1 Lah. 234; 1931 Lah. 633=134 I.C. 124, also see 16 Mad. 415 and 3 Lah.L.J. 156.

(7) 27 All. 447; 30 All. 547; 36 All. 540; 47 All. 926; 29 Mad. 367; 3 I.C. 459=20 M.L.J. 121; 45 Mad. 246; 1926 Mad. 225=92 I.C. 624; 1931 Nag. 180=54 I.C. 732=22 O.C. 289; 67 I.C. 968=25 O.C. 30; 3 Pat.L.J. 443=44 I.C. 50; 5 P.R. 1911; 30 I.C. 104=58 P.R. 1915; 57 I.C. 215; 75 I.C. 667=1923 Lah. 309; 122 I.C. 736=1930 Lah.

III. An appeal, by defendant, relating to the right to redeem or foreclose, involves no change in the nature of suit, and Court-fee is payable, as in suit, on the principal amount secured by the instrument of mortgage.[8]

IV. An appeal, by defendant, relating only to the amount decreed payable on redemption and wanting its increase, is to be valued under Art. 1, Sch. II, on the value of subject-matter in appeal.[9]

V. When the appeal, by plaintiff or defendant, relates to the right to redeem, and to the amount for redemption, the Court-fee is payable under S. 7 (ix), on the principal amount secured by the instrument of mortgage.[10]

383. APPEAL AGAINST A PORTION OF THE DECREE.—Where the appeal in a redemption suit relates only to an item in the accounts, Court-fee on the memorandum of appeal need only be paid on the amount in question, as if the whole suit was to recover that amount.[11] In a suit for sale on the basis of a mortgage, where a decree is passed declaring the separate liabilities of the different properties and one of the defendants, whose property has been held liable for a specific sum of money, appeals, the proper Court-fee to be paid on the memorandum of appeal is the fee calculated on the sum for which the appellant's property had been held liable.[12] In a suit to redeem certain land on payment of a share of a debt for which it had been mortgaged together with other land, a decree was passed for redemption of part of the land, but the Court held that the plaintiff had not established his right to the rent. On an appeal to the High Court, Court-fee was payable *ad valorem* on the share of the mortgage-debt, and not only on the value of the land exonerated.[13] The principle underlying this ruling is not reconcilable with the principles held applicable to suits brought by a mortgagee. For instance, it has been held by the Madras High Court that, where a decree directs the payment of an amount, and in default orders that the lands of the defendants should be sold, and the proceeds applied to payment of the debt, an appeal against so much of the decree as declares the liability of the defendant's property, and

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601; 134 I.C. 124=1931 Lah. 633; also see 11 I.C. 198=134 P.W.R. 1911 (cross-objections) and 92 I.C. 624.

(8) 3 I.C. 459=20 M.L.J. 121; 23 Mad. 84, (F.B.); 1928 Mad. 929 =110 I.C. 752; 8 I.C. 1125=6 N.L.R. 164; 54 I.C. 733=22 O.C. 289; 67 I.C. 968=25 O.C. 30; 67 I.C. 130=3 L.L.J. 156; 134 I.C. 124= 1931 Lah. 633; 1933 Lah. 155.

(9) See F.-n. (7) above, also see 1933 Lah. 155.

(10) 3 I.C. 459=20 M.L.J. 121; 1928 Mad. 929=110 I.C. 752; 1933 Lah. 155; also see 8 I.C. 1125=6 N.L.R. 164; 54 I.C. 733=22 O.C. 289 and 67 I.C. 968.

(11) *Fakir Mahomed* v. *Manakasajishet*, 1883 P.J. 39.

(12) *Chhabraj* v. *Court of Wards*, 18 I.C. 577=35 All. 92.

(13) *Vasudeva* v. *Madhava*, 16 Mad. 326, also see and *cf.* (1882) B. P.J. 106. (*Held*, that an appeal by the purchaser of a share of an equity of redemption in a suit to redeem his share is chargeable under S. 7 (ix), on the principal mortgage-money).

for a relief to be released from the decree, is not to be valued as in a declaratory decree, but Court-fee should be paid *ad valorem* on the value of the debt not exceeding the value of the property.[14] A Full Bench of the Madras High Court, in *Ramakrishna Reddi* v. *Kotta Kota Reddi*[15] has followed this view, and held that where the appellant in an appeal against a mortgage decree does not dispute the amount decreed, but raises the question of the liability of certain properties for the decree amount, the value of the appeal, for the purpose of Court-fee, under Art. 1 of Sch. I, of the Court-Fees Act, is the value of such properties, when such value is less than the amount decreed, and when such value-exceeds the amount decreed, such decree amount. This view was accepted by the Calcutta High Court in *Jagatdhar Narayan* v. *Brown*,[16] and *Bibi Umatal Batul* v. *Nanji Koer*,[17] and also in *Jagat Prasad Singh* v. *Parba Narayan Jha*;[18] and, it has been also followed in ALLAHABAD,[19] and PUNJAB.[20] Accordingly, in an appeal against a decree passed by the trial Court directing that certain property is subject to a charge for a certain amount, the Court-fee is payable *ad valorem* on the charge declared on the property not exceeding the value of property, where the appellant claims exemption or inclusion of specific property from liability under mortgage-decree. The *Patna High Court* likewise holds that in an appeal, by a purchaser of mortgaged property claiming exemption of his properties from liability under the decree, the Court-fee is payable on the decretal amount, or the value of the properties, whichever is less.[21] The NAGPUR COURT, had held in *Ghasi Ram* v. *Liladhar*,[22] that in a claim for foreclosure where there is no dispute as to the price of redemption, and the dispute is confined entirely to the right to foreclose the whole or a portion of the property, the value of a suit or an appeal for Court-fee purposes is the principal sum secured by the mortgage. This was on the ground that the value of a particular relief, once correctly found for the purpose of stamping the plaint, remains unchanged in all subsequent stages of the lis. But this view is in conflict with the view of several High Courts that the value of a suit in plaint, and on appeal need not be the same.[23] Accordingly, Kinkhede, A.J.C., has differed from the view taken in *Ghasi Ram* v. *Liladhar*,[24] and has held, in *Punjaji* v. *Ram Chand*,[25] that, where

(14) *Venkappa* v. *Narasimha*, 10 Mad. 187.
(15) 30 Mad. 96 (F.B.).
(16) 33 Cal. 1133.
(17) 11 C.W.N. 705.
(18) 37 Cal. 914=8 I.C. 1145.
(19) *Khachara Singh* v. *Kharag Singh*, 33 All. 20=7 I.C. 315.
(20) *Tharumal* v. *Chandu Ram*, 11 P.R. 1916=33 I.C. 138, and *Atma Singh* v. *Nathumal*, 7 Lah. 215=1926 Lah. 408=96 I.C. 473.
(21) *Modho Roy* v. *Bibi Mahbywan Nissa*, 5 Pat. 721=1927 Pat. 46=98 I.C. 807.
(22) 20 I.C. 257.
(23) *In re Tiruvangalath*, 92 I.C. 624.
(24) 20 I.C. 257=9 N.L.R. 86.
(25) 111 I.C. 650=1928 Nag. 316.

in appeal the appellant seeks exoneration of any property from liability under the mortgage-decree, or wants the appellate Court to make the excluded property also liable under the decree, the relief sought is a consequential one, and it is the value of the debt or the value of the property, whichever may be less that determines the value of the relief in appeal for purposes of the Court-Fees Act.

384. APPEALS AGAINST PRELIMINARY AND FINAL DECREES.—Where in a redemption suit, the defendant denied the plaintiff's right to redeem, and also challenged the amount on which redemption was sought, and the Court held that the plaintiff had the right to redeem, and directed that accounts be taken, and the defendant appealed against this decree; and, the trial Court in the meantime having gone into the accounts, found a certain sum to be due; and, the defendant appealed, claiming a higher sum, it was held that the two appeals should be consolidated and considered as one, and that the full amount of Court-fee should be realised as if the two appeals were one appeal.[26-27] Where the plaintiff obtained a preliminary decree in a mortgage suit, followed later by a final decree requiring the plaintiffs to pay a certain sum; and, the plaintiffs appealed against the preliminary decree only on a Court-fee of Rs. 10, objecting to the amount which they were decreed to pay under the final decree, it was held by the Bombay High Court, that the Court could not permit the plaintiffs to avoid the provisions of the Court-Fees Act by getting what might or might not be an effective reversal of the final decree by a circuitous method when the direct method of appealing against the final decree was open to them.[28] A final decree under O. 34, R. 3, Civil Procedure Code, stops the litigation equally as the final decrees for sale under O. 34, Rr. 4 and 5, and the appellant against a final decree for foreclosure should pay court-fee as in any other appeal from a final decree.[29] An appeal against a final decree passed in a foreclosure suit, under O. 34, R. 3, Civil Procedure Code, has to be stamped *ad valorem* as an appeal from the decree: and it is not to be treated as an appeal against the order—*vide* O. 43, R. 1 (o), which gives an appeal only against an order refusing to extend the time for the payment of mortgage-money.[30] Where in a suit for redemption, a preliminary decree was first passed fixing the amount payable, followed by a final decree, and separate appeals against the preliminary decree as also from the final decree are preferred, and an *ad valorem* court-fee has been paid on the appeal from the preliminary decree on the amount of reduction claimed by the appellant, court-fee stamp of Rs. 2 only is sufficient on the appeal from the final decree.[31]

(26-27) *Lalta Prasad* v. *Sheoraj Singh*, 41 I.C. 346=39 All. 452.
(28) *Dattatraya Ramachandra* v. *Ajmuddin*, 18 Bom.L.R. 76.
(29) *Balaji* v. *Ballakdas*, 1928 Nag. 146=111 I.C. 650.
(30) *Ram Dhain* v. *Magbul Ammad Khan*, 30 I.C. 492 (493).
(31) *Budha Ram* v. *Niamat Rai*, 4 Lah. 406=7 I.C. 375=1923 Lah. 632=6 L.L.J. 72.

385. **SEVERAL MORTGAGES.**—Where there are two mortgages upon the same property in favour of the same person and one of the mortgages is declared to be genuine, the subject-matter for the purpose of determining Court-fee payable on any appeal against the decree is the value of the mortgage found to be genuine by the Court of appeal.[32] If there are different mortgages in favour of one and the same person, *in respect of the same property*, the mortgagor cannot seek to redeem one of them without redeeming the others. But not so if they are different properties.[33] If in a suit for sale on a mortgage, the dependants are impleaded as subsequent mortgagees, and held to be sub-mortgagees and they appeal claiming to be prior mortgagees, Court-fee is payable under this paragraph, and not a fixed fee as on a prayer for declaration.[34]

386. **(IV) FORECLOSURE SUITS—Right to foreclose or sale.**—The right to foreclosure or sale arises, under S. 67 of the Transfer of Property Act, at any time after the mortgage-money has become payable, and before a decree for redemption is passed, or before the mortgagor pays the amount, or deposits it in Court for account of the mortgagee. The right consists in obtaining an order from Court that the mortgagor shall be absolutely debarred of his right to redeem the property, or an order that the property be so sold. A suit for foreclosure can be brought only by a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which such a right is conferred on the mortgagee.

387. **COURT-FEE IN FORECLOSURE SUITS.**—In a suit for declaration that the conditional sale has become absolute, Court-fee is leviable on the plaint under S. 7, Paragraph IX, Cl. 3 of Act III of 1870.[35] A suit for foreclosure of a mortgage should bear *ad valorem* Court-fee on the principal sum secured by the mortgage bond sued on.[36] It was held, by the Nagpur Judicial Commissioner's Court, in *Ghasiram* v. *Liladhar*,[37] that in a claim for foreclosure where there is no dispute as to the price of redemption and the dispute is confined entirely to the right to foreclose *the whole or a portion of the property*, the value of a suit or an appeal for Court-fee purposes is the principal sum secured by the mortgage. This ruling proceeds on the principle enunciated in *Dhiraj Singh* v. *Raja Ram*,[38] that the value of a particular relief, once correctly formed for the purpose of stamping the plaint remains unchanged in all subsequent stages of the lis; and, the fact of the dispute relating to only a portion of the property does not make any difference. This view has been combated most elaborately on a review

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(32) 22 I.C. 609=(1910) M.W.N. 231=1 L.W. 102.

(33) S. 61 T. P. Act, also see and *cf.* S. 67 (A), for the converse case of suit by mortgagee.

(34) *Kundan Lal* v. *Duli Chand*, 1932 A.L.J. 45.

(35) *Hazara Singh* v. *Muhammad Kham*, 134 P.L.R. 1901.

(36) *Dhiraj Singh* v. *Raja Ram*, 6 N.L.R. 164=8 I.C. 1125.

(37) 20 I.C. 257=9 N.L.R. 86.

(38) 8 I.C. 1125=6 N.L.R. 164.

of the authorities of Allahabad, Calcutta, Lahore, Madras, and Patna High Courts, in *Punjari* v. *Ramchand*,[39] already noticed in detail. The ALLAHABAD HIGH COURT holds that in a suit for foreclosure, Court-fee is payable on the plaint upon the principal amount secured by the mortgage under S. 7 (ix), of the Court-fees Act. Where the suit is dismissed, the memorandum of appeal must bear an *ad valorem* Court-fee on the value of the subject-matter of the appeal under Art. 1, Sch. I, to the Act.[40] This followed the view taken in *Raghbir Prosad* v. *Shanker Bux Singh*,[41] and dissented from the ruling of the Oudh Court in *Sangat Baksh Singh* v. *Rawat Dij Deo Baksh Singh*.[42] The PUNJAB CHIEF COURT held in *Telu Mal* v. *Lal Singh*[43] that a suit for possession of land by a mortgagee who claims to have foreclosed his mortgage, which was by way of conditional sale, under Regulation XVII of 1806, is one "*for possession of land*" within S. 7 (v) of the Court-Fees Act, and not a suit by a mortgagee to foreclose the mortgagee within Cl. 9 of the same section, such suits being unknown in the Punjab where the foreclosure takes place under the provisions of Regulation XVII of 1806, in proceedings which are not judicial but ministerial and that accordingly the value of the subject-matter of such a suit, for jurisdictional purposes, had to be determined by rules made under S. 3 of the Suits Valuation Act, 1887, *viz.*, at thirty times the revenue.[44] Similarly, it has been held by the Oudh Judicial Commissioner's Court, in *Sheo Ram Singh* v. *Barkan Singh*,[45] that in all suits contemplated by Cl. (ix) of S. 7, the amount of the mortgage-money is the determining factor in fixing the Court-fee, which should be according to the principal sum secured by the instrument of mortgage. But, these considerations do not apply to a suit for possession of immoveable property. A suit for possession, whether of the nature of proprietary, under-proprietary, mortgagee's possession, etc., should be treated as suits for possession, to which Cl. (v) of S. 7, applies, and to which Cl. (ix) of S. 7, is wholly inapplicable.[46] When the suit is by a mortgagee holding more than one mortgage, the Court-fee should be paid on the aggregate amount of the securities.[47]

388. COURT-FEE IN FORECLOSURE APPEALS.—The Nagpur Court held in *Ghasi Ram* v. *Lila Ram*,[48] that in a claim for foreclosure where there is no dispute as to the price of redemption, and the dispute is confined entirely to the right to foreclose *the whole or a portion of the property*, the value of a suit or an appeal

(39) 111 I.C. 650=1928 Nag. 316.
(40) 47 All. 926=88 I.C. 888=1925 All. 734.
(41) 36 All. 40=21 I.C. 736=11 A.L.J. 1016 (F.B.).
(42) 67 I.C. 968=25 O.C. 30=1922 Oudh 82.
(43) 7 P.R. 1893.
(44) This has been referred and distinglished in 134 P.L.L. 1901 (F.-n. 1, *ante*).
(45) 1931 Oudh 366=134 I.C. 597=14 O.L.J. 365 (*Sheo Ram Singh* v. *Barkan Singh*).
(46) *Ibid.* 1931 Oudh 366=134 I.C. 597=8 O.W.N. 536.
(47) 14 C.P.L.R. 154; 7 O.C. 152.
(48) 20 I.C. 257=9 N.L.R. 86.

for Court-fee purposes is the principal sum secured by the mortgage. This view rests on the authority of *Dhiraj Singh* v. *Raja Ram*,[49] which has been very much shaken by the adverse criticism in *Punjari* v. *Ram Chand*.[50] Where the right to foreclose is the *sole* matter in controversy, the subject-matter of appeal must no doubt be valued on the amount of principal mortgage debt.[1] but the qualification introduced by the view taken in ALLAHABAD and PATNA High Courts is that the fee is payable on the amount found actually due by one party to the other.[2] In a suit for foreclosure where a decree was passed in favour of the plaintiff conditionally on his redeeming a prior mortgage by paying a specified sum, it was held that the Court-fee payable on appeal by plaintiff, challenging the validity of the prior mortgage, was an *ad valorem* fee on the amount which the plaintiff was held liable to pay to the prior mortgagee.[3] Where an appeal is preferred from a decree in a foreclosure suit to the effect that the amount to be paid to the mortgagee should be reduced by a certain amount, the subject-matter of appeal under Art. 1, Sch. I of the Court-Fees Act is the amount so sought to be reduced,[4] and conversely, where the mortgagee decree-holder seeks to enhance the amount decreed as payable to him by the trial Court, Court-fee is *ad valorem* on the amount sought to be enhanced, under Art. 1, Sch. I of the Act.[5] This point has been brought out lucidly in the judgments of Oudh Judicial Commissioner's Court, in *Mt. Gumani* v. *Banwari*,[6] *and Sangat Bakh Singh* v. *Rawat Dijdeo Baksh Singh*,[7] and *Nirman Singh* v. *Shyam* v. *Narain*.[8] But for opposite view see Allahabad cases.[9] The Court-fee on appeal by defendant against a mortgage-decree is to be paid on the amount declared by the Court as due to the plaintiff on the date fixed for payment including interest calculated from the date of suit to the date fixed for payment in the decree, but exclusive of costs: while interest *pendente lite* is to be calculated for purposes of valuation in appeal, Court-fee need not be paid on *future* interest, in the case of appeals, or cross-objections in suits for redemption or foreclosure.[10]

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(49) 6 N.L.R. 164=8 I.C. 1125.

(50) 1928 Nag. 316=111 I.C. 650.

(1) *Dhiraj Singh* v. *Raja Ram*, 6 N.L.R. 164=8 I.C. 1125; and *Sekharan Nair* v. *Eacharan Nair*, 3 I.C. 459=20 M.L.J. 121.

(2) 47 All. 926; 3 Pat.L.J. 443.

(3) *Bajilal* v. *Govardhan*, 31 All. 265=6 A.L.J. 155=1 I.C. 1000.

(4) *Omkar* v. *Lakmichand*, (1909) 5 N.C.R. 130.

(5) *Basdeo* v. *Daya Ram*, 29 I.C. 609.

(6) 54 I.C. 733=22 O.C. 289. (F.-ns. 93 and 94.)

(7) 67 I.C. 968=25 O.C. 30 (F.-n. 97).

(8) 127 I.C. 32=1930 Oudh 329=7 O.W.N. 585.

(9) *Baldeo Singh* v. *Kalka Prasad*, 18 I.C. 365=35 All. 94=11 A.L.J. 20; *Raghubir Prasad* v. *Shanker Baksh*, *Nepal Rai* v. *Debi Prasad*, 27 All. 447=1905 A.W.N. 40; 36 All. 40=21 I.C. 723=11 A.L.J. 1016 (F.B.), and *Prag* v. *Bhagwan Das*, 47 All. 926=88 I.C. 888=1925 All. 737=23 A.L.J. 853. Compare 134 I.C. 604=1931 Oudh 353=8 O.W.N. 836 (citing 2 I.C. 600=12 O.C. 130.

(10) *Baldeo Singh* v. *Kalka Prasad*, 18 I.C. 365=35 All. 94, *cf.* *Nirman Singh* v. *Shyam Narain*, 127 I.C. 32=1930 Oudh 329.

389. THE CONFLICT OF VIEWS.—A remarkable difference of opinion exists between the Oudh Judicial Commissioner's Court, and the Allahabad High Court on the question whether in an appeal from an entire foreclosure decree, *i.e.*, where the right to foreclose as well as the amount to be paid or received are called in question, the Court-fee should be calculated on the amount secured by the mortgage, under S. 7 (ix) of the Act, or on the amount declared by the Court below to be payable, under Art. 1, Sch. I of the Act. Ashworth, A.J.C. held in *Mt. Gumani* v. *Bunwari*,[11] that S. 7 (ix), is to be construed to be applicable only where the question raised by the plaint or memorandum of appeal is the right to foreclose apart from such right for an adjudged sum. In the case of appeals if the lower's Court's decision against foreclosure is impugned, the Court-fee will be assessed, as in suits, on the principal debt. If the appeal challenges the amount to be paid or received by the appellant, the fee will be assessed on the difference between the sum awarded (as payable or receivable) by the lower Court and that maintained as due in the memorandum of appeal. Daniels, A.J.C., and Lyle, A.J.C., held in the Bench case of *Sangat Baksh Singh* v. *Dijdeo Baksh Singh*,[12] that where plaints are chargeable under S. 7 (ix), of the Act read with Art, 1. Sch. I, it does not follow that the memoranda of appeal filed against decrees passed in such suits are invariably chargeable in the same manner. A suit may change its nature in appeal, *e.g.*, in a suit for foreclosure, the appeal may raise no question as to the right to foreclose, and the appeal may be merely in respect of the amount which the first Court has held to be payable. The conclusions reached and tabulated S. 382 *ante*) were that if the right to foreclose is involved in the appeal, the Court-fee would be computed in accordance with the provisions of S. 7 (ix) of the Act; but, if the appeal challenges merely the amount to be paid or received, without questioning the right to foreclose, the Court-fee payable on appeal will be according to Art. 1, Sch. I, on the value of the subject-matter in dispute.[13] "Where in a foreclosure suit a decree has been passed for a certain sum in default of payment of which within a fixed time the property shall be foreclosed and the defendant in appeal denies the plaintiff's right to foreclose on the ground that he is not liable to pay any portion of the sum decreed, the Court-fee payable on the memorandum of appeal will be calculated *ad valorem* on the subject-matter in dispute, according to Art. 1, Sch. I, that is, on the amount of the decree the payment of which the defendant by his appeal seeks to avoid."[14] The ALLAHABAD HIGH COURT has held in a series of cases,[15] leading to the Full Bench decision in *Raghbir Prosad* v.

(11) 54 I.C. 733=22 O.C. 289.

(12) 67 I.C. 968=25 O.C. 30.

(13) *Ibid.* 67 I.C. 968=25 O.C. 30.

(14) *Ibid.*

(15) *Nepal Rai* v. *Debi Prasad*, 27 All. 447; (Appeal in respect of a specified portion of the sum declared payable for redemption, valued according to the principal sum secured by the mortgage); *Mahadeo Prasad* v. *Gorakh Prasad*, 30 All. 547 (followed *Reference under Court-Fees Act*, 29 Mad. 367), *Raghbir Prosad* v. *Shanker Bux*, 36 All. 40=21 I.C. 723 =11 A.L.J. 1016.

Shanker[16] that where a foreclosure suit is dismissed, the memorandum of appeal must bear an *ad valorem* Court-fee on the value of the subject-matter of appeal under Art. 1, Sch. I, of the Court-Fees Act, as S. 7 (ix), of the Act, does not apply to appeals, and is confined to suits only. Daniels, J. when confronted with his own ruling on the Bench of Oudh Judicial Commissioner's Court in *Sangat Baksh Singh's case,*[17] declined to reverse the Full Bench view in *Raghbir Prosad* v. *Shanker Bhaksh*[18] and he followed the latter case in *Prag* v. *Bhagwan Din.*[19] The Oudh Judicial Commissioner's Court in *Ram Sarup Singh* v. *Gaya Prasad,*[20] affirmed the decision of Daniels,, A.J.C. in *Sangat Bakh's* case: and expressly dissented from Daniel, J.'s judgment in the Allahabad case. It has been observed by the Oudh Court in *Ram Sarup Singh* v. *Gaya Prasad,*[21] that "the provisions in the Court-Fees Act as regards the Court-Fee payable in an appeal from such suits are far from clear." The view prevailing in Oudh has been that "where the appeal does not raise any dispute as regards the amount payable under a mortgage, but only questions the mortgagee's right to foreclosure or sale, or to mortgagor's right of redemption, then the Court-fee payable in appeal should be the same as that payable in the suit under S. 7 (ix) according to the principal money expressed to be secured by the instrument of mortgage."[22] This view is in clear conflict with the Allahabad view, followed in Madras, and supported by the Lahore High Court, but the practical result arrived at according to both these academical views is not much different.

V. Suits for Mortgage by Conditional Sale.

390. **CLAUSE 3—Suits on Mortgages by Conditional sale.**— A mortgage by conditional sale is defined in S. 58 (*c*) of the *Transfer of Property Act.*[23] It has been held by the Punjab Chief Court, that in a suit for declaration that the conditional sale has become absolute, Court-fee is leviable on the plaint under S. 7 (ix), Cl. 3 of the Court-Fees Act[24] but that a suit "for possession of land" by a mortgagee who claims to have foreclosed his mortgage, which was by way of conditional sale, under Regulation XVII of 1806, falls within S. 7 (v) of the Court-Fees Act, and not within

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(16) 36 All. 40=21 I.C. 723=11 A.L.J. 1016.
(17) 67 I.C. 968=25 O.C. 30.
(18) 36 All. 40=21 I.C. 723=11 A.L.J. 1016.
(19) 1925 All. 734=88 I.C. 888=23 A.L.J. 853.
(20) 134 I.C. 604=1931 Oudh 353=8 O.W.N. 836.
(21) *Ibid.* 134 I.C. 604=1931 Oudh 353=8 O.W.N. 836.
(22) *Ibid.*
(23) "Mortgage by Conditional Sale". "Where the mortgagor ostensibly sells the mortgaged property—on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or on condition that on such payment being made the sale shall become void, or on condition that on such payment being made the buyer shall transfer the property to the seller, the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale."
(24) *Auzara Singh* v. *Muhammad Khan,* 134 P.L.R. 1901.

S. 7 (ix) of the same section,[25] such suits being unknown in the Punjab, where the foreclosure takes place under the provisions of Regulation XVII of 1806, in proceedings which are not judicial but ministerial. Accordingly, the value of the subject-matter of such a suit for jurisdictional purposes, has to be determined by rules made under S. 3 of the Suits Valuation Act, 1887, *viz.*, at thirty times the revenue.[26] The distinction between S. 7 (v), and S. 7 (ix), which has been pointed out in an Oudh case, is that the former covers suits for the proprietary possession of land, but the latter applies where the possession sought is not proprietary possession, but possession as mortgagee in accordance with the alleged terms of a deed of mortgage.[27] This distinction is unsound, as S. 7 (v), applies to suits for possession, as proprietor, under-proprietor, lessee, tenant, or possession as mortgagee.[28] Under S. 7 (ix) of the Court-Fees Act, when a mortgagee brings a suit to foreclose a mortgage or where a person holding a mortgage by conditional sale applies to have the sale declared absolute, the fee is to be calculated in accordance with the principal amount secured by the instrument of mortgage.

Paragraph X.—Suits for Specific Performance.

Synopsis.

I. Scope and applicability.
II. Specific performance as main relief.
III. Contract of sale.
IV. Contract of mortgage.
V. Contract of lease.
VI. Awards.

391. SCOPE AND APPLICABILITY.—This paragraph provides the mode of valuation, for purposes of Court-fees, of suits for specific performance;

(*i*) of a contract of sale,
(*ii*) of a contract of mortgage,
(*iii*) of a contract of lease, and
(*iv*) of an award.

A suit based on a contract of sale, mortgage, or lease, or on the basis of an award of arbitrators, of which specific performance can be claimed under the provisions of Specific Relief Act, I of 1877, against the contracting party, would be governed for purposes of Court-fees by this paragraph, even though the suit is coupled with other reliefs consequential on the main prayer for specific performance. It follows that a suit claiming a relief other than specific performance based on one of the four classes of action specified in this paragraph, and against persons not parties to or liable under, the contract, is outside the scope of this paragraph.

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(25) *Telumal* v. *Lal Singh*, 20 P.R. 1893.
(26) 20 P.R. 1893, *supra*.
(27) *Hemnath* v. *Wilayat Ahmad*, 117 I.C. 766=1929 Oudh 321=6 O. W.N. 491.
(28) *Sheo Ram Singh* v. *Barkan Singh*, 1931 Oudh 366=134 I.C. 597=14 O.L.J. 365.

Illustrations.

392. (1) SUIT BY MORTGAGEE FOR POSSESSION OF LAND ON GROUND OF OUSTER BY MORTGAGOR.—Where a plaint seeks to recover possession of a certain garden land, of which plaintiff alleges that he was put in possession, under certain deeds of mortgage, and from which he was subsequently ousted by defendants, the suit is not one for specific performance of a contract, so as to fall under Cl. (x) (*b*) of S. 7 of the Court-Fees Act, but would fall under paragraph (*e*) of Cl. (v) of S. 7 of the Act, chargeable with an *ad valorem* fee on the value of garden land.[29]

393. (2) CONTRACT OF GUARANTEE.—A suit based on a contract of guarantee, to specifically enforce the defendant's contract to restore certain villages to plaintiff, to do all acts necessary to give them full possession and for compensation, does not fall within the purview of S. 7 (x), but come under S. 7 (1) of the Court-Fees Act.[30]

394. (3) CONTRACT OF EXCHANGE.—A suit for the specific performance of a contract of exchange falls under S. 7 (x), Cl. (*a*) of the Court-Fees Act. "The subject of exchanges is dealt with in Chapter VI of the Transfer of Property Act, and an examination of the provisions of Ss. 118, 119 and 120, shows that the Legislature has put an exchange on the same footing with a sale in almost every respect."[31] It has been pointed out by the Lahore High Court, in *Kundan Lal* v. *Anand Sarup*,[32] that a transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale; and according to S. 120, Transfer of Property Act, each party has the rights and is subject to the liabilities of a seller as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that which he takes," and their Lordships were of opinion that "apparently the framers of Cl. (x) of S. 7 of the Court-Fees Act contemplated that for the purposes of Court-fee under this clause an exchange also would be dealt with as a sale; for otherwise there is no reason why separate provision should not have been made relating to exchange in this clause seeing that separate provisions have been made relating to contract of sale, contract of mortgage, contract of lease and an award."[33] It is submitted that the Court-Fees Act is very defective in places, and the above construction though very reasonable, is nevertheless one which supplies an evident omission however inadvertent: and the point can easily be made clear by an amendment adding, "contract of exchange" in S. 7, Cl. (x).

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(29) *Chelamall* v. *Fazlbeg*, 33 P.R. 1880.

(30) *Chunibai* v. *Secretary of State*, 1890 P.J. 204.

(31) *Kundan Lal* v. *Anand Sarup*, 73 I.C. 709=1923 Lah. 456.

(32) *Ibid.* 73 I.C. 709=1923 Lah. 456.

(33) *Ibid.* 73 I.C. 709=1923 Lah. 456. (This ruling is doubted by Satyamurthi, on the ground that an exchange is not a mutual sale within the meaning of Transfer of Property Act, as sale is a transfer of ownership in exchange for a price paid or promised, and the price must consist of *money* to constitute a sale—*see* 2 Luck. 575 and 1927 Oudh 204).

395. (4) BENAMI TRANSACTION.—Where the plaintiff brought a suit praying for a declaration that a certain purchase made in the name of the first defendant was a benami transaction for the plaintiff, and for an order that the defendant should execute a conveyance of the property to him, it was held, by the Bombay High Court, that a decision of the lower Court, holding that a suit is one for specific performance of a contract of sale, and to be valued according to the amount of the consideration-money, being a decision as to the class to which a suit belongs, was appealable. The case had to be remanded to the district Court to be disposed of according to law, without an expression of opinion on the contention that the Subordinate Judge was wrong in law, and that the suit was one for a declaratory decree where consequential relief was prayed.[34]

396. (5) NO AGREEMENT TO PERFORM.—Where plaintiff sued for a certain share of land on the allegation that before an auction of the land, parties had entered into an agreement to buy and pay for the land in partnership, and thereafter to divide it amongst themselves, and that they had paid their quota of the portion of the purchase-money deposited on date of sale, and were willing to pay the balance, but were wrongfully refused their share by the defendants, it was held by the Punjab Chief Court, that the suit was not specifically covered by Cl. 10, of S. 7, of the Court-Fees Act, there being no agreement to *perform*; the contract to buy the property was complete, and title in the property purchased, vested in the plaintiffs as joint owners; accordingly, the value of the suit was 30 times the *jama* of the share claimed in the land, the possession of which was sued for.[35]

(6) SUIT FOR POSSESSION BY LESSEE.—A suit for possession by the lessee of land comprised in a lease, is not a suit for specific performance of the contract of lease, and the Court-fee payable on the plaint should be the same as in a suit for possession. The value of the relief asked for on appeal would determine the Court-fee payable on the memorandum of appeal in such suit.[36]

(7) SUIT FOR REFUND OF PURCHASE-MONEY.—Ordinarily, a suit will not lie for the specific performance of a contract to pay money. But the case of a vendor is an exception to the rule and the Court will grant the vendor specific performance of his contract against the purchaser. Where the plaint, in a suit by a vendor for recovery of the unpaid sale consideration, expresses the plaintiff's willingness to perform his part of the contract and execute a conveyance, the suit is, in effect, one for specific performance.[37] The form of the decree is that the plaintiff is to be at liberty to prepare and execute a conveyance to the defendant as

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(34) *Dada Bhan Kittur* v. *Nagesh Ramchandra*, 23 Bom. 486.

(35) *Nanda Singh* v. *Sunder Singh*, 37 P.R. 1901=97 P.L.R. 1901.

(36) *Ghulam Sahir* v. *Narain Prosad*, 5 A.L.J. 534=28 A.W.N. (1908), 201.

(37) *Bhashyakarlu Naidu* v. *Nungambakkam Andalammal*, 49 I.C. 385=(1918) M.W.N. 896=9 L.W. 19=35 M.L.J. 89.

an escrow to be delivered to the defendant on payment of the purchase-money after the conveyance is ready.[38] Where, however, the contract is that the vendee should pay the purchase-money first and the vendor should execute the conveyance afterwards, the proper decree would be a direction that the defendant should pay followed by a direction that the conveyance should be executed after payment.[39] Where plaintiff sues for refund of part purchase-money paid to the defendant, who had executed a sale-deed in his favour, on the allegation that the defendant had practised fraud upon the plaintiff by suppressing important facts in connection with the sale, and he pays for declaration to that effect, and damages, the suit is not for specific performance of the contract of sale, but for cancellation of the sale, falling within S. 7 (iv) A, of the Court-Fees Act, as amended.[40]

397. **SPECIFIC PERFORMANCE AS MAIN RELIEF-PRAYER FOR DELIVERY OF POSSESSION.**—This clause applies where the suit is for specific performance alone, or at least as the main relief, with same other relief as merely ancillary, and constituting only a part of the specific performance of the contract of sale.

398. (a) **Allahabad**—It was held, by the ALLAHABAD High Court, in *Mohi-uddin* v. *Majlis Rai*,[41] that where the vendor agrees to sell, and the vendee to buy, immoveable property, contingent on the vendor's title being declared in a pending suit, a suit by the vendee, for execution of a conveyance and for possession of the property, is virtually one for the specific performance of a contract. This was followed *in Nihal Singh* v. *Sewa Ram*,[42] where it was held that "when a vendor contracts to sell, he contracts as laid down in S. 55 of the Transfer of Property Act, to execute a proper conveyance of the property to the buyer, tender it to him for execution at a proper time and place on payment of the amount due in respect of the price. He also contracts to give to the buyer or such person as he directs such possession of the property as its nature admits." Accordingly, where a plaintiff was seeking to enforce the contract of sale, *viz.*, to force the vendor to do that which he was bound to do under that contract, that is, to execute and register a sale-deed and to hand over possession of the property, the suit was held to be in substance and in form a suit for specific performance of a contract, and Court-fees was payable in accordance with Cl. x of S. 7 of the Court-Fees Act.[43]

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(38) The form of decree in such a case will be found in *Morgan* v. *Briscoe*, (1886) 31 Ch.D. 216; 56 L.J.Ch. 194; 53 L.T. 852; 34 W.R. 193; and is set out in Seton's judgments and orders, Vol. II, pp. 2174, 2175.

(39) 49 I.C. 385 (386, 387), *supra*.

(40) In re *Lakshmi Ammal*, 91 I.C. 729=49 M.L.J. 608=1925 M.W.N. 826=1926 Mad. 96.

(41) 6 All. 131=4 A.W.N. (1884), 42.

(42) 38 All. 292=14 A.L.J. 434=35 I.C. 275.

(43) *Ibid.* 38 All. 292. (The subsequent transferee was also made a party to this case under the terms of S. 27 of the Specific Relief Act.)

399. **(b) Calcutta.**—The Calcutta High Court, held in *Madan Mohan Singh* v. *Gaja Prosad Singh*,[44] that "a plaintiff may sue, not only for an executed and completed conveyance on the basis of an alleged executory contract, but also to recover possession, the right to which springs out of the contract"; but, where the plaintiff not merely seeks specific performance of the alleged contract of sale, but also asks that the defendant may be compelled to execute a conveyance, and to deliver possession of the property to him, the suit is in substance one for possession of the property, and ought to be valued under S. 7, Cl. (v) of the Court-Fees Act, 1870, according to the value of the subject-matter.[45] An earlier decision of the Court in the case of *Ranjit Sinha* v. *Kalidasi Debi*,[46] was referred to in meeting the contention that the plaintiff had no cause of action for delivery of possession till the conveyance has been executed in his favour, and his title completed.

400. **(c) Madras.**—In *Krishnasami* v. *Sundarappa Ayyar*,[47] the contract of sale had been entered on behalf of a Hindu minor, by his mother and guardian, and was held binding on the minor. The vendee sued for specific performance of the contract and for possession, and Court-fee on the prayer for possession was held payable apart from the Court-fee on the relief for specific performance of the contract of sale including the relief for the execution of a conveyance by the infant's mother on his behalf. And in *Narayana Kavirayan* v. *Kandasami Goundan*,[48] it was held that the right to possession in such a case arises coincidently with the right to the execution of a conveyance by the defendant. Both rights are declared under S. 55 of the Transfer of Property Act. In *Krishnammal* v. *Manandiar Sundararaja Aiyar*,[49] Tyabji, J. held that the effect of S. 55 (i) (*f*) of the Transfer of Property Act, when read with S. 54 of the same Act, and with the Registration Act is that, in the absence of an express agreement to transfer possession independently of the registered conveyance, the person agreeing to purchase has no right to possession of the property until the conveyance is completed. This ruling is directly against the ruling in 18 Madras 415, and has been distinguished and not followed in *Sundara Ramanujam* v. *Sivalingam Pillai*,[50] where the

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(44) 11 I.C. 228=14 C.L.J. 159.

(45) 11 I.C. 228 (229)=14 C.L.J. 159.

(46) 37 Cal. 57=14 C.W.N. 527=5 I.C. 205. (*Held*, that the joinder of the two prayers for execution of a deed of transfer and for recovery of possession being in no way repugnant to any rule of law).

(47) 18 Mad. 415.

(48) 22 Mad. 24=8 M.L.J. 147. *Cf. Krishnammal* v. *Manandiar Sundararaja*, 22 I.C. 912=15 M.L.T. 103=(1914) M.W.N. 200=1 L. W. 147. (Suit by a vendee for possession on basis of a conveyance obtained in execution of a decree for specific performance of contract, and also against persons not parties to that decree, constitute different causes of action).

(49) 22 I.C. 912=15 M.L.T. 103=(1914) M.W.N. 200=1 L.W. 147.

(50) 77 I.C. 542=1924 Mad. 360=47 Mad. 150=18 L.W. 333 =45 M.L.J. 431.

Allahabad view in 6 All. 231 and 38 All. 292, was relied upon, for holding that both the rights, *viz.*, the right to the sale-deed and the right to possession spring out of the same contract though one necessarily precedes the other and consequently the delivery of possession is a part of the specific performance of a contract of sale unless the terms thereof show that the vendee was not under an obligation to deliver possession. The conclusion reached was that a suit to enforce specific performance of a contract to sell immoveable property by directing execution of a proper sale-deed in favour of the plaintiff on his paying the price into Court and for recovery of possession is a suit for specific performance falling under S. 7, Cl. x (*a*) of the Court-Fees Act and not one for possession falling under S. 7 (v) (*e*) of the said section. A suit for specific performance is, in its essence, different from a suit for possession and the mere fact that possession is also claimed in such a suit does not render any the less a suit for specific performance. Court-fee in such a suit is, therefore payable on the amount of the consideration.[1]

401. (d) Punjab—The Calcutta view in *Madan Mohan Singh's* case—14 C.L.J. 159—was followed by the Punjab Chief Court in *Nathe Khan* v. *Mahammad Khan*,[2] in the absence of any authorities to the contrary being cited before the Court. It was observed, however, that "the main relief asked, was specific performance of the contract by execution of a sale-deed, and the claim for possession appeared to be subsidiary to the main relief." In a later case, of *Gopaldas* v. *Parma Nand*,[3] similarly, it was held that the suit was one for possession of land alleged to have been sold, and the additional prayer that the defendants may be ordered to execute a sale-deed was an ancillary relief. In *Kundan Lal* v. *Anand Samp*,[4] S. 7 (x), was applied to an exchange transaction. In *Fakir Chand* v. *Ram Datt*,[5] where the plaintiff had agreed to purchase a shop from the defendant for a certain price, and a sale-deed was executed, but it was not registered, and the defendant having subsequently sold the shop to a third person, the plaintiff sought three reliefs:—(1) the return of the original deed, or (2) in the alternative, execution of a fresh deed; and (3) registration of the deeds: but no relief for possession was asked, as plaintiff alleged to be in possession of the shop. It was held by the Lahore High Court that the Allahabad cases in 6 All. 231, and 38 All. 292, were not distinguishable on the ground that the plaintiff in the Lahore case being in possession did not require the relief as to possession, as there may be a suit for specific performance of a contract without any prayer for possession.[6] This view has been followed in *Shivdial* v. *Shiv*

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(1) *Ibid.* 77 I.C. 542=1924 Mad. 360=47 Mad. 150.
(2) (1918) 46 I.C. 534.
(3) (1917) 60 I.C. 512.
(4) 73 I.C. 709=1923 Lah. 456.
(5) 80 I.C. 953=5 Lah. 75=1924 Lah. 439.
(6) *Deonandan Prasad* v. *Janki Singh*, 56 I.C. 322=5 Pat.L.J. 314=1 Pat.L.T. 325=(1900) Pat. 266. Cited in 80 I.C. 953=5 Lah. 75=1924 Lah. 439, *supra*.

Ramdas,[7] where the Madras view in *Sundara Ramanujam's* case,[8] is relied upon for dissenting from the two earlier Punjab cases,[9] in *Gopaldas* v. *Parma Nand*, and *Nathe Khan* v. *Muhammad Khan*.

402. (e) Oudh.—The Oudh Judicial Commissioner's Court holds the view that inasmuch as in a suit for specific performance of a contract of sale, and for possession of the property agreed to be sold, the relief for specific performance is the main relief, and not ancillary to the claim for possession, a separate Court-fee is, under S. 17, of the Court-Fees Act, payable on such relief both in the original Court, and the Court of appeal.[10]

403. (f) Patna.—The Patna High Court follows the view taken by the Calcutta High Court, in *Madan Mohan Singh* v. *Gaja Prasad Singh*, and has held that a suit for specific performance of a contract to sell immoveable property, and for recovery of possession of the property should be valued according to the market-value of the property under S. 7 (v), of the Court-Fees Act, and not according to the amount of the consideration money.[11]

404. (a) CONTRACT OF SALE—Relief by delivery of possession.—A suit by plaintiff alleging a contract of sale, in which the prayer is that the defendants might be compelled to complete the sale to the plaintiffs, by the execution of a conveyance, and the registration of the sale-deed, and for possession of property has been held to be in substance one for specific performance of a contract of sale, falling under S. 7, Cl. x, of the Court-Fees Act. The ALLAHABAD HIGH COURT took this view in *Mahiuddin Ahmed* v. *Majlis Rai*,[12] and this was accepted as correct, by Tudball, J., in *Nihal Singh* v. *Sewa Ram*.[13] The CALCUTTA HIGH COURT took a different view in *Madan Mohan Singh* v. *Gaja Prosad Singh*,[14] and this view was followed by the Punjab Chief Court in *Nathe Khan* v. *Muhammad Khan*,[15] and in *Gopaldas* v. *Parmanand*,[16] but, an opposite view was taken by the MADRAS HIGH COURT in *Narayana Kaoirayam* v. *Kandasami Gounden*,[17] and in *Krishnasami* v. *Sundarappayar*.[18] However, compare *Krishnammal* v. *Sundararaja Aiyar*,[19] which was distinguished and not

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(7) 111 I.C. 72=1928 Lah. 635.

(8) 47 Mad. 150, *supra*.

(9) 46 I.C. 534, *supra*, and 60 I.C. 512, *supra*.

(10) *Ram Nidh* v. *Balkaran Singh*, 60 I.C. 654=23 O.C. 388.

(11) *Ram Bahadur* v. *Banwarilal* (118 I.C. 134=1929 Pat. 642), also see *Deonandan Prasad* v. *Janki Singh*, 56 I.C. 322. Where the decision of the Calcutta High Court, in Madan Mohan Singh's case is cited with approval.

(12) 6 All. 231 (F.N. 41, *ante*).

(13) 38 All. 292=35 I.C. 275 (F.N. 42, *ante*).

(14) 14 C.L.J. 159=11 I.C. 228 (F.N. 45, *ante*).

(15) 46 I.C. 534=128 P.W.R. 1918 (F.N. 2, *ante*).

(16) 60 I.C. 512 (F.N. 25, *ante*).

(17) 22 Mad. 24=8 M.L.J. 147 (F.N. 48, *ante*).

(18) 18 Mad. 415=5 M.L.J. 164 (F.N. 47, *ante*).

(19) 22 I.C. 912=15 M.L.T. 103=(1914) M.W.N. 200 (F.N. 49, *ante*).

followed in *Sundara Ramanuja* v. *Sivalinga Pillai*.[20] The Madras view now very distinctly agrees with the Allahabad view, that a suit to enforce specific performance of a contract to sell land, and for possession of the property agreed to be sold is a suit for specific performance falling under S. 7, Cl. x (*a*), of the Court-Fees Act: and such a suit is not a suit for possession falling under S. 7, Cl. v (*e*), nor is it one which embraces "two or more distinct subjects" within the meaning of S. 17, of the Act. The delivery of possession is a part of specific performance of contract of sale, unless the terms indicate that the vendor was not under an obligation to deliver possession, although the decree may have to be executed to obtain delivery of possession.[21] The LAHORE HIGH COURT, has in later rulings followed the Allahabad and Madras view *vide Kundun Lal* v. *Arund Sarup*,[22] where an exchange was held to be on the same footing wtih a sale, and in *Fakir Chand* v. *Ramdatt* [23] and *Shivdial* v. *Shiv Ram Das*,[24] where a suit for specific performance of a contract to sell by execution of a sale-deed and for possession of land was held to be governed by S. 7, Cl. x (*a*), and not under S. 7 (v), in respect of the relief for delivery of possession in such cases. The OUDH JUDICIAL COMMISSIONER'S COURT held the relief as to delivery of possession ancillary to the relief for specific performance, and separately chargeable under S. 17, of the Court-Fees Act,[25] but the PATNA view is that a suit for specific performance of a contract and for possession is to be valued for the purpose of Court-fees under S. 7 (v), of the Act, and not on the amount of sale-consideration as provided by S. 7 (x) (*a*).[26]

405. (b) CONTRACT OF MORTGAGE.—The PUNJAB CHIEF COURT, pointed out in *Chelamal* v. *Fazlbeg*.[26-a] that a suit to recover possession of a date-garden, of which the plaintiff alleged that he had taken possession under his contract of mortgage, but from which he was subsequently ousted by the defendant, could not be treated as a suit for the specific performance of the contract, but had to be valued for purposes of Court-fee as an ordinary suit for possession, on the basis of unlawful ejectment, falling under S. 7, (v) (*e*), of the Court-Fees Act, and would be chargeable with *ad valorem* fee on the market-value of the garden-land in suit. A suit would fall under Cl. x (*b*), of S. 7, where a mortgagor or mortgagee has performed his part of the contract, and the other party is in default in the performance of his part of the contract, *e.g.*, when the loan is advanced and the mortgage-

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(20) 77 I.C. 542=47 Mad. 150=1924 Mad. 360.

(21) *Ibid.* 77 I.C. 542=47 Mad. 150=1924 Mad. 360. (F.N. 50 *ante*. Compare 1916 (1 M.W.N. 77), suit for possession against mortgagee from vendor, or a person not bound by the Court Act of sale.

(22) 73 I.C. 709=1923 Lah. 456.

(23) 5 Lah. 75=80 I.C. 953=1924 Lah. 439. (F.N. 25, *ante*).

(24) 111 I.C. 72=1928 Lah. 635. (F.N. 7 *ante*).

(25) 60 I.C. 654=23 O.C. 388. (F.N. 10 *ante*).

(26) 118 I.C. 134=1929 Pat. 642. (F.N. 11 *ante*).

(26-a) 33 P.R. 1880.

deed is not executed, or *vice-versa*.[27] In a mortgage suit, where plaintiffs claim to recover money due on a mortgage-bond by sale of the mortgaged properties and the property was ordered to be sold subject to the mortgage of defendant 3, but plaintiff appealed against the latter part of the decree, praying for its modification, by declaration that defendant 3's bond had no priority of charge over his own, it was held that the relief sought was not declaratory, but *ad valorem* Court-fee was to be paid on the value of the lien which the plaintiff-appellant sought to destroy.[28]

406. (c) CONTRACT OF LEASE: Valuation of suit for Court-fee.—Where an agreement of lease, for the purpose of clearing certain *jungle* lands, was made under which a lease was to be granted to lessee after the land had been cleared, and the plaintiff prayed that his *Maurasi Mokarari* right in certain lands be declared and a decree passed against the defendants for directing them to grant him a lease, and the yearly rent payable on the lease was Rs. 71, but the plaintiff had valued the suit for purposes of jurisdiction at Rs. 1,100, it was held, by the CALCUTTA HIGH COURT, that under the provisions of S. 7, Cl. x (*c*), of the Court-Fees Act, the proper valuation in a suit between a landlord and tenant for delivery by the landlord of a lease was to be determined according to the amount of the rent of the land payable for the first year of the term in respect of which the lease was claimed; and, that under S. 8, of the Suits Valuation Act that would be the valuation for purposes of jurisdiction: and that there were no materials upon which the plaintiff could arrive at the valuation of the suit at Rs. 1,100.[29]

407. Suit for possession by lessee.—A suit by a lessee to obtain possession of the property comprised in his lease and of which possession has not been given is not governed by this clause, but falls within the purview of S. 7, Cl. (v) (*c*).[30] Where plaintiff let a house to defendant on lease expiring on a certain date, and defendant sub-let the premises, and as he could not get possession from his sub-tenant, he brought a suit and obtained a decree, and plaintiff then filed a suit against defendant claiming possession, and that the decree obtained against the sub-tenant was not binding on him, and for an injunction against defendant not to take possession, it was held that the defendant could not be restrained from obtaining the benefit of his decree, and had nothing to do with the dispute between plaintiff and the defendant.[31]

408. Value for jurisdiction.—In order to determine the jurisdiction and the Court-fee payable in a suit for specific performance of a contract to grant a lease the

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(27) 33 P.R. 1880.

(28) 51 I.C. 786=4 Pat.L.J. 323.

(29) *Port Canning and Land Improvement, Co., Ltd.* v. *Roson Ali Mollah*, 15 I.C. 46.

(30) 28 A.W.N. (1908), p. 201.

(31) *Nasarvanji Cawasji Arjani* v. *Shahajadi Begam*, 66 I.C. 768=24 Bom.L.R. 378.

suit must be first valued for payment of Court-fees in accordance with the rule embodied in S. 7, Sub-S. (x), Cl. (*e*), of the Court-Fees Act. This value is to be computed according to the aggregate amount of the fine or premium, if any, and of the rent agreed to be paid during the first year of the term. S. 8 of the Suits Valuation Act provides that where, in suits other than those referred to in the Court-Fees Act, 1870, S. 7, paragraphs v, vi, ix, and paragraph x, Cl. (*d*), Court-fees are payable *ad valorem* under the Court-Fees Act, 1870, the value as determinable for the computation of Court-fees and the value for purposes of the jurisdiction shall be the same. The right construction is not that the valuation for purposes of jurisdiction is to be determined first by the market-value of the property, and to take that for the purposes of payment of Court-fees, as "this would be to nullify the provisions of S. 7, of the Court-Fees Act," but the correct view is that the valuation for the purposes of jurisdiction should, in the cases mentioned there, follow and be the same as the valuation for Court-fees.[32] The view taken in this case, is supported by the decisions in *Hari Sanker Dutt* v. *Kali Kumar Patra*,[33] which approved the earlier cases of *Bai Varunda Lakshmi* v. *Bai Maulgaori*[34] and *Velu Goundan* v. *Kumaravelu Goundan*.[35] "The substance of the matter is that the valuation for assessment of Court-fees controls the valuation for purposes of jurisdiction."[36] Under S. 8 of the Suits Valuation Act, S. 7, (xl (*d*), is excepted and so, unlike Cl. (*a*) to (*c*) of the paragraph, the value for jurisdiction and Court-fee need not be the same under S. 7, (x) (*d*), of the Act.[37]

409. (d) AWARDS.—An award is inforceable by suit in a Court of competent jurisdiction, notwithstanding provisions under S. 15, of the Indian Arbitration Act.[38] The Lahore High Court held in *Jai Narain Babu Lal* v. *Naraindas Jainimal*,[39] that there is no reason in principle that an arbitrator should not go on simultaneously if the dispute between the parties before him, is also pending for adjudication in a Court of law; and there is no statute law in support of the proposition that an award made after the commencement of an action must be treated as invalid, even though the award deals with a question which is not a matter in controversy in the action. An award made after the commencement of

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(32) *Sailendra Nath Mitra* v. *Ram Charan Pal*, 66 I.C. 268=34 C.L.J. 94=25 C.W.N. 768. Citing 32 Cal. 734=9 C.W.N. 690; 18 Bom. 207; 20 Mad. 289=7 M.L.J. 30.

(33) 32 Cal. 734=9 C.W.N. 690.

(34) 18 Bom. 207.

(35) 20 Mad. 289=7 M.L.J. 30.

(36) *Sailendra Nath Mitra* v. *Ramchanan Pal*, 66 I.C. 268=34 C.L.J. 94=25 C.W.N. 768, *supra*.

(37) See S. 8, Suits Valuation Act, 1887.

(38) *Jai Narain Babu Lal* v. *Naraindas Jaini Mal*, 69 I.C. 585=3 Lah. 296 (313)=1922 Lah. 369.

(39) *Ibid.* 69 I.C. 585 (586)=3 Lah. 296=1922 Lah. 369.

an action can be held invalid only if the action embraces the dispute decided by the arbitrator. Similarly, an award made pending a suit, dealings with matters which are not the subject-matter of the action, involves no encroachment upon the jurisdiction of the Court.[40] The provisions of Chapter II, of the Specific Relief Act, 1877, as to contracts which may be specifically enforced, apply *mutatis mutandis to awards.*[41] S. 7, x (*d*), deals with *suits* for specific performance, and not with applications for execution of awards which are enforceable under S. 15 of the Indian Arbitration Act, as if the award were a decree of Court. The section refers to suits for specific performance of *awards* and not for enforcement, by specific performance, of agreement or contract to refer.[42] Where in pursuance of an agreement to refer to arbitration, the Court appointed arbitrators and an award was passed which was attacked by the parties on the allegation of the misconduct of the arbitrators, and the award was set aside, and the parties preferred an appeal under the provisions of S. 104, C.P.C., it was *held* that the fee payable was not computable under this clause, but under Art. 17 (vi), of Sch. II, of the Court-Fees Act. An application for filing of a private award under the provisions of the Civil Procedure Code, Sch. II, (paragraph 20), is no bar to a regular suit to enforce an award. There is a clear distinction between the summary remedy provided by Civil Procedure Code, and a regular suit to specifically enforce an award.[43]

410. Award, whether a contract.—There is a conflict of view on the question whether a suit to enforce an award can be treated as a suit to specifically enforce a "contract." In *Sukho Bibi* v. *Ram Sukh Das,*[44] a suit for money under an award was held to be virtually a suit to have the award specifically enforced, (and was governed by Art. 113, of the Limitation Act), and the same article was held applicable in a similar suit later.[45] But it is difficult to see how a suit for a sum of money can in any light be regarded as a suit for specific performance. Again, it has been held in *Sornavalli Ammal* v. *Muthayya Sastrigal,*[46] by the Madras High Court, that a suit to enforce an award cannot be treated as a suit to enforce a "contract," in the ordinary sense. It was observed that "it is true that S. 30, of the Specific Relief Act directs that the provisions of Chapter II of that Act shall apply to awards. It cannot on that ground be contended that awards are contracts, because it would have to be similarly contended that directions in a will or codicil to execute a particular settlement, which are included in the same section,

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(40) *Ibid.* 69 I.C. 585=3 Lah. 296=1922 Lah. 369.

(41) Section 30, Special Relief Act, I of 1877.

(42) *U. Thi Ha* v. *H. Thudathana,* U.B.R. (1909) 2nd quarter.

(43) *Subraya Chetti* v. *Sadasiva Chetti,* 20 Mad. 490, *Brij Mohan Lal* v. *Shiam Singh,* 24 All. 164.

(44) 5 All. 263.

(45) *Raghubar Dial* v. *Madan Mohan Lal,* 16 All. 3.

(46) 23 Mad. 593.

are also contracts, which would be absurd.''[47] ''No doubt, an award springs out of an agreement to submit to arbitration, but the award itself is a decision of the arbitrator binding upon the parties as a decision.''[48] This was followed, by ALLAHABAD High Court, in *Sheo Narain* v. *Beni Madho,*[49] and the earlier Allahabad decisions in *Sukho Bibi* v. *Ram Sukh Das*;[50] *and Raghubar Dial* v. *Madan Mohanlal,*[1] were distinguished. In *Bhajahari Saha Banikya* v. *Behary Lal Basak,* the Calcutta High Court observed that a valid award is operative even though neither party has sought to enforce it by suit, or by application under the Civil Procedure Code. Where an award made by the arbitrators appointed by the parties results in the merging and extinguishing of all claims embraced in the submission, and vesting of right to possession of certain property in the plaintiff, a suit for recovery of possession of land, on declaration of plaintiff's right thereto on the basis of the award will not be a suit for specific performance of the award, but an ordinary suit for possession of property to which Art. 144, of the second schedule of the Limitation Act applies.[2] It may be noticed that S. 7, x (*d*), does not use the words contract to refer—but an *award.*

Para. XI.—Suits between Landlord and Tenants.

Synopsis.

I. Amendments.
II. Scope and application.
III. Valuation for Court-fee, and jurisdiction.
IV. Clauses, (a), (b), (c), (cc); (d), (e), and (f).

411. AMENDMENTS.—Clause (cc), was inserted by, S. 2 (1), of the Court-Fees Amendment Act VI of 1908. The words ''*immoveable property*'' in clause (e), and in the last sentence of this paragraph have been substituted for the word ''land'' by S. 2, (ii) of the Court-Fees Amendment Act, VI of 1905.

412. SCOPE AND APPLICATION.—The words ''landlord'', and ''tenant,'' include ex-landlord and ex-tenant. This was so held by their Lordships of the Privy Council, in *Kamani Industrial Bank* v. *Satya Niranjan Shaw,* in interpreting S. 14 and 15, of the Calcutta Rent Act, 1920. It was observed that ''in order to give any working effect to the Act it is necessary that the words landlord and tenant ''must include, as they often do in ordinary parlance, ex-landlord and ex-tenant. An action by ex-landlord against ex-tenant might ordinarily be described as an action of landlord against tenant.''[3] This paragraph prescribes the Court-fee in certain specified classes of suits between landlord

(47) 23 Mad. 593, *supra.*
(48) 23 Mad. 593, *supra.*
(49) 23 All. 285.
(50) 5 All. 263 (F.N. 44, *ante*).
(1) 16 All. 3 (F.N. 45, *ante*).
(2) 33 Cal. 881 (4 C.L.J. 162).
(3) 1928 P.C. 227 (230), also see 1933 Pat. 664 (F.N. 17) and 2 Pat. 260=74 I.C. 619=1923 Pat. 380 (F.N. 14).

and tenant, *viz.*, Cl. (*a*), (*b*), and (*cc*), relating to suits by landlords, against tenants, and Cls. (*c*), (*d*), (*e*), and (*f*), relating to suits by tenants against landlords. A suit based on title to the property against persons not standing in the relation of landlord and tenant cannot be governed by paragraph XI of S. 7, of the Act for ejectment against certain defendants.

Illustrations.

413. (1) Suit by landlord against tenant and a stranger.—A suit brought by plaintiff landlord for ejectment against certain defendants after the expiry of the term of the lease, and against another person, who was really licensee of the other defendants and had no title to the land, and against whom, therefore, the plaintiffs in their plaint asked for a declaration of their title, and also a relief against the defendant as a trespasser, was one not strictly within the contemplation of S. 7 (x).[4] Where there is no relationship of landlord and tenant between the plaintiff, and certain defendants, a suit for ejectment against those other defendants cannot proceed without a prayer for declaration of title.[5]

414. (2) Suit for declaration of occupancy rights.—A suit for declaration of title, as an occupancy tenant in a certain holding, under S. 95, of the United Provinces Tenancy Act, falls under Art. 5, Sch. II, of the Court-Fees Act, laying down a Court-fee of annas eight only on a plaint or memorandum of appeal in a "suit to establish or disprove a right of occupancy."[6]

415. (3) Suit for assessment of fair and equitable rent.—Under S. 7, (xi), of the Court-Fees Act, Court-fee is payable upon the rent "payable for the year next before the date of presenting the plaint." The clauses in this paragraph do not provide for a suit for assessment of rent which implies that no rent was paid previously by the defendant or that the rent payable is uncertain and depends upon a determination by the Court. Therefore, a suit for recovery of possession with mesne profits of certain land alleged to be given to the defendants in lieu of services to be rendered by the defendants on condition that the plaintiffs would be entitled to take *khas possession* of the land either when the services were no longer required, or when the defendants ceased to render those services; or a suit, in the alternative, for assessment for rent and for recovery of specific sums as damages for use and occupation of the land, was a suit to obtain a declaratory decree where consequential relief was prayed, and that it came within S. 7, Cl. (iv) (*c*), and not under S. 7, Cl. (xi), of the Court-Fees Act.[7]

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(4) *Hira Lal Banerjee* v. *Surendra Nath Sarbanga*, 91 I.C. 488=1926 Cal. 504.

(5) *Promotha Nath Ganguly* v. *Amiraddi Sheikh*, 55 I.C. 178=24 C.W.N. 151. (Also see cases under Cl. v (xi) (*e*), 31 Mad. 14; 5 Pat. 208; 32 Cal. 268; 1933 Nag. 312.

(6) *Ratan Singh* v. *Khem Karan*, 44 I.C. 608=16 A.L.J. 167=40 All. 358.

(7) *Dhanukhdhari Tewari* v. *Mani Sonar*, 100 I.C. 913=6 Pat. 17=1927 Pat. 123=8 P.L.T. 366.

416. (4) Suit by landlord for declaration of kudivaram rights.—Cl. (xi), of S. 7, is applicable when the suit is based on a lease, but not when the plaintiff also wants a decree establishing his title.[8] Where the *Inamdar* claimed both *Varams*, and the right to eject the tenants after due notice by virtue of his title to the *Kudivaram*, and the tenants did not dispute his claim to the *melavaram*, but asserted occupancy rights; the suit was held to fall under S. 7, (iv) (*c*), to obtain a declaratory decree, that plaintiff is entitled to the *kudivaram*, and consequential relief of possession.[9]

417. (5) Suit by alleged tenant against landlord, and third person.—A suit by a person, alleging that he was a tenant dispossessed by his landlord, against the landlord and a third person who is in possession of the property, is not one between landlord and tenant, and Court-fees should be paid under S. 7 (v), of the Act.[10]

418. VALUATION FOR COURT-FEE AND JURISDICTION.—In the case of suits falling under paragraph (xi), of S. 7, of the Court-Fees Act, the valuation for purposes of jurisdiction shall be the same as for purposes of the Court-fee, and accordingly it must follow the same.[11] S. 8, of the Suits Valuation Act provides that except in the classes of suits enumerated therein valuation for Court-fees and jurisdiction shall be the same. This paragraph is not one of the excepted classes of suits, accordingly, the valuation for purposes of jurisdiction in suits falling under S. 7 (xi), of the Act, is to be the same, *viz.*, "according to the amount of rent of the immoveable property to which the suit relates, payable for the year, next before the date of presenting the plaint."[12] Under the Court-Fees Act as amended by Act VI of 1905, under Cl. XI (cc), of S. 7. suit between landlords and tenants for the recovery of immoveable property from the tenants have to be valued for the purpose of payment of Court-fees upon the rent payable for the year next before the date of presenting the plaint. Under S. 8, of the Suits

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(8) *Balasiddhantam* v. *Perumal Chetti*, 27 I.C. 162=1915 Mad. 654, cited in *Sobhanadri Rao Pantulu Garu*, 1933 Mad. 42=1932 M.W.N. 1197 =63 M.L.J. 759=36 M.L.W. 701=140 I.C. 462.

(9) *Sobhanadri Rao Pantulu Garu*, 140 I.C. 462=1933 Mad. 42, *supra*.

(10) *Mt. Bhagobai Devi Singh* v. *Shiamlal Dwarka Prasad*, 1933 Nag. 312, also see *Farzund Ali* v. *Mohanth Lal Puri*, 32 Cal. 268; and *Palaniappa* v. *Sithravelu*, 31 Mad. 14; *Ram Ekbal Singh* v. *Baldeo Singh*, 25 I.C. 507=19 C.L.J. 418; and *Krishna Chandra* v. *Raja Mobakur*, 94 I.C. 19=5 Pat. 208=1926 Pat. 251; compare, *Secretary of State* v. *Dinshaw Nowroj*, 87 I.C. 1002=1925 Sind. 275.

(11) *Sailendra Nath Mitra* v. *Ramcharan Pal*, 66 I.C. 268=34 C.L.J. 94=25 C.W.N. 768.

(12) *Sohanlal* v. *Gulab Mal*, 50 P.R. 1896, followed in *Ramchand* v. *Ram Sukh Das*, 27 P.R. 1910=30 P.W.R. 1910=5 I.C. 910. (*Held*, that the value for purposes of Court-fee, and consequently, for purposes of jurisdiction, of a suit for the recovery of immoveable property from a tenant, including a tenant holding over after the determination of a tenancy, is the rent for the year next before suit), also see, *Dhaturi Singh* v. *Kedar Nath Goenka*, 8 Pat.L.T. 475. (*Held*, that in a suit for arrears of rent, and for enhancement of rent, the valuation for the purposes of Court-fees and jurisdiction shall be the same).

Valuation Act, the same must be taken to be the valuation for the purpose of jurisdiction.[13] The rulings prior to the amendment of 1905, are therefore not in point.[14] It has been held by the Madras High Court in *Narayanaswami Naidu Garu* v. *Vannavalli Seshagiri Rao*,[15] that the Court-Fees Act was amended by Act VI of 1905, and a new category of suits was added to S. 7, of the Court-Fees Act, as Cl. (xi) (cc) *i.e.*, for recovery of immoveable property from a tenant. The effect of the amendment is to remove such a suit from S. 7, Cl. v, to S. 7, Cl. xi, of the Court-Fees Act. Until the passing of Act VI of 1905, a suit for the recovery of immoveable property from a tenant would not have been valued in accordance with S. 8, of the Suits Valuation Act, but in accordance with S. 14, of the Civil Courts Act. This S. 14, has not been expressly repealed, but the law must be deemed to have been changed by the later enactment, which is applicable to the whole of India.[16] The ALLAHABAD HIGH COURT takes the same view. A suit for possession of leased property on the ground that the tenancy has terminated by forfeiture, is, therefore, properly valued not at the value of the immoveable property itself, but the amount of the rent payable for the year next before the date of presentation of plaint.[17]

419. Cl. (A)—Suits for delivery of muchilikas.—This clause relates to a suit by a landlord against his tenant "for the delivery by the tenant of the counterpart of a lease". This counterpart of a lease is known as a *muchilika*, while the lease issued by the landlord to the tenant is called a *Patta*. Section 50 (2), of the Madras Estates Land Act entitles the landholder to call upon his ryot to give him a *muchilika* for any current revenue year in exchange for a *patta*; and S. 56. of the Estates Land Act, provides for suits for acceptance of *patta* and giving of *muchilika* as counterpart. The remission of fees in respect of *plaints* in suits under Ss. 55, 56, 95, 112, 144 and 160 of the Madras Estates Land Act, is notified (Vide Exemption No. 35), by Notification issued under S. 35, of the Court-Fees Act. However, there is no remission in respect of memoranda of appeals on second appeals in such suits. Mr. Satyamurthi cites two unreported decisions of the Madras High Court, in S.R. No. 586 of 1129—*Vaithilinga Aiyaswami Ayyar* v. *The District Board of Tanjore*, and in S.A. 1430 of 1918, dated 7th April, 1919, bearing on

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(13) *Nandan Singh* v. *Debi Din*, 25 I.C. 975=12 A.L.J. 933.

(14) *Cf. Ram Raj Tewari* v. *Girnandan Bhagat*, 15 All. 63=A.W.N. (1892), 240, also *Cf. Duryao Singh* v. *Bharat Singh*, 3 I.C. 562=6 A.L.J. 905, F.B., 6 M.L.T. 311=32 All. 19; (Distinguished and not followed in 25 I.C. 975, *supra*).

(15) 31 I.C. 104=18 M.L.T. 398=2 L.W. 1031=29 M.L.J. 572 =39 Mad. 873.

(16) *Ibid.* 31 I.C. 104=39 Mad. 873=18 M.L.T. 398=29 M.L.J. 572=2 L.W. 1031, also see, *Vannavali Seshagri Row* v. *Pammela Amluayya Sastrulu*, 24 I.C. 376=38 Mad. 795; (holding that the indirect effect of the amendment would be to enlarge the scope of S. 8 of Act VII of 1887, which applies to all suits other than those referred to in S. 7, Cl. v, vi, ix and x (*d*) of the Court-Fees Act).

(17) *Mohan Lal* v. *Bhuteshwar*, 83 I.C. 1=1925 All. 142.

the question as to the amount of Court-fee payable in respect of a memorandum of second appeal preferred by a ryot in a suit filed by him under the estates land Act, S. 112. These were held not possible to estimate at a money-value, and as such are governed by Art. 17-B. of Sch. II, of the Act.

420. Cl. (B)—Suits by landlord for enhancement of rent.—This paragraph applies to suits by a landlord for the enhancement of the rent payable by a tenant. In Madras, the provision relating to enhancement of rent is to be found in S. 24, of the Madras Estates Land Act. Court-fees on plaints under this section of the Madras Estates Land Act, has not been remitted by the Government. In Punjab, the provision as to enhancement of rent is to be found in S. 20 of the Punjab Tenancy Act, XVI, of 1887. Such suits are cognizable by Revenue Courts only, under provisions of S. 77, (3) (*a*), of the Punjab Tenancy Act. As to suits for enhancement of rent by suit, in Bengal, see Bengal Tenancy Act, S. 30.

421. Cl. (C)—Suits by tenant for the delivery by landlord of a lease.—This is provided for by S. 55 of the Madras Estates Land Act: and is similar to the corresponding suits by landlord falling under paragraph xi (a).

422. Cl. (CC)—Suits by landlord for the recovery of immoveable property from a tenant—(1) Amendment of 1905.—This clause was inserted by the Amending Act VI of 1905. The effect of this amendment as affecting the valuation of such suits, for purposes of Court-fees and jurisdiction has been noticed in a previous paragraph. Such suits, prior to the amendment, fell under S. 7 (v), of the Court-Fees Act, as being suits for possession of land: and were governed by S. 14, of the Madras Civil Courts Act (III of 1873). The effect of the amendment was clearly to take such suits out of clause (v), and to put them into Cl. XI (a), with the indirect result of enlarging the scope of S. 8, of the Suits Valuation Act, which applies to all suits other than expressly excepted therein, *viz.*, S. 7, (v), (vi), (ix) and (x) (*d*), of the Court-Fees Act. A suit by landlord "for the recovery of immoveable property from a tenant, including a tenant holding over after the determination of a tenancy", is now covered by S. 8, of the Suits Valuation Act, VII of 1887, and the value for the purposes of Court-fees and jurisdiction, is not the valuation under S. 7 (v), of the Act, but under S. 7 (xi), according to one year's rent of the immoveable property, next prior to date of presenting the plaint.[18]

423 (2) Suit for arrears of rent and possession.—Where *A* brought a suit to recover two years' rent and possession of the property with mesne profits, it was held that under Cl. XI (cc), of S. 7, of the Court-Fees Act, one year's rent was

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(18) *Vannavalli Seshagri Row* v. *Gopisetti Narayanasami Naidu*, 24 I.C. 374=38 Mad. 795; *Narayanasami Naidu* v. *Vannavalli*, 39 Mad. 873=31 I.C. 104=29 M.L.J. 572=2 L.W. 1031=18 M.L.T. 398. Also see *Mohanlal* v. *Bhuteshwar*, 83 I.C. 1=1925 All. 142, and, *Ramchand* v. *Ramsukhdas*, 27 P.R. 1910=210 P.L.R. 1910=30 P.W.R. 1910=5 I.C. 910, followed in 93 I.C. 291 (Oudh).

the proper valuation of a suit for recovery of immoveable property from a tenant including a tenant holding over.[19]

424. (3) Plaint and Pleadings—Denial of plaintiff's title.—The Court-fee payable has to be determined on the nature of allegations in the plaint, and not on the pleadings in the written statement of the defendant. Accordingly, even where there was a denial of the plaintiff's title in the written statement, a suit framed on the alleged relationship of landlord and tenant, for a relief falling under S. 7, Cal. (xi) (cc), should succeed or fail, according to the finding on this point, and the Court need not go into the question of title raised in defence.[20] Where in a suit by landlords against their tenants for ejectment and for arrears of rent, the tenants pleaded that the transaction between the parties was only a mortgage by conditional sale, that they had deposited the mortgage amount in Court, under S. 83, of the Transfer of Property Act, and that as the plaintiff-mortgagees had refused to receive the same from the Court, they were debarred from suing for any rent subsequent to the date of such deposit and from ejecting the defendants, it was held that the mere deposit of the amount in Court did not put an end to the already subsisting relation of landlord and tenant between the parties and that the plaintiffs were entitled to sue for possession and rent.[21] It was observed in *Punyamurthulu Venkata Rattamma,* v. *Ghalasani Sreeramulu,*[22] that "there is nothing in the Court-Fees Act to warrant the assumption that S. 7, Cl. XI (cc), is confined to cases where the defendant is clearly estopped from denying the plaintiff's title. If a landlord sues a tenant for the possession of immoveable property, the Court-fees must be assessed under S. 7, Cl. (XI) (cc). It is then open to the defendant to deny that the relationship of landlord and tenant exists between him and the plaintiff. If he succeeds, the plaintiff will be unsuited; and cannot, in a suit of this character, fall back upon an alternative plea that defendant is a trespasser liable in damages for use and occupation. If the defendant fails to establish his contention, the landlord will be entitled to his remedy."[23] A suit for a declaration of title against certain persons who are treated as tenants of the plaintiff and for relief against a stranger, who was really the

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(19) *Balkrishna Bhunaji Beknalkar* v. *Ramkrishna Ganadhar Dikshit,* 1931 Bom. 234=33 Bom.L.R. 263.

(20) *S. K. M. Sivasubramania Nadar* v. *S. S. K. Subramania Nadar,* 1932 Mad. 409=35 M.L.W. 393=138 I.C. 88. Also see *Ram Chand* v. *Ram Sukhdas,* 27 P.R. 1910=210 P.L.R. 1910=30 P.W.R. 1910=5 I.C. 910. (*Held,* that it was immaterial that the defendant denied the existence of the relation of landlord and tenant, and pleaded that he was owner of the property in suit, and set up adverse possession).

(21) *Balasidhantam* v. *Perumal Chetti,* 27 I.C. 162=27 M.L.J. 475, cited in 1932 Mad. 409=138 I.C. 88=35 M.L.W. 393, *supra*: and distinguished in *Bapurao* v. *Narayan Keshavchande,* 1927 Nag. 321=103 I.C. 337.

(22) 99 I.C. 981=1927 Mad. 331=25 L.W. 76=52 M.L.J. 100.

(23) 99 I.C. 981=1927 Mad. 331, etc., *supra.,* Citing *Thavasi Ammal* v. *Salai Ammal,* 43 I.C. 643=35 M.L.J. 281=22 M.L.T. 930=1918 M.W. N. 46=7 L.W. 178.

licensee of the other defendants and had no title to the land, does not fall under Cl. XI (cc), of S. 7, of the Court-Fees Act.[24] As against defendants, between whom and the plaintiff, there is no relationship of landlord and tenant, the suit cannot proceed without a prayer for declaration of title which is outside the scope of S. 7, (xi) (cc).[25] Cl. (xi) (cc) applies to a suit for recovery of immoveable property from a tenant. When the suit is not one for recovery of immoveable property from a tenant, but is by one who alleges to be tenant for recovery of immoveable property from persons alleged to be trespassers instigated by the landlord, the clause does not apply.[26] Where a suit for *khas* possession was instituted against three defendants and the first defendant admitted that he had been holding the land under a lease from the plaintiff, which had expired; but the other two defendants established their plea that there was no relationship of landlord and tenant between the plaintiff and them, it was held by the Calcutta High Court that, in the circumstances of the case, the suit could only proceed against defendant No. 1, on a plaint stamped under S. 7, Cl. XI (cc), of the Court-Fees Act,[27] and as against others, the Court-fee should have been payable on the market-value of the property under S. 7 (v), of the Act.[28] A suit for ejectment, and a declaration that the plaintiff was absolute owner of the property in suit, is a suit for a declaration of title with a consequential relief, falling under S. 7, (iv) (c), of the Act, and not coming within S. 7, (xi) (cc), Court-Fees Act.[29]

425. (4) Suits to eject a tenant.—A suit for ejectment against a tenant comes under S. 7, Cl. (xi) (cc), of the Act, and is chargeable on one year's rent and not on the market-value of the house.[30] The Court-fee payable in a suit for ejectment of an under *raiyat* upon whom a notice under S. 49, of the Bengal Tenancy Act had been served, is that on a year's rental, under this paragraph, (xi) (cc), of S. 7, of the Court-Fees Act.[31] An application under S. 27, of Act x of 1859, for the assistance of the Collector, in ejecting a *raiyat*, however, is not a *suit*, and therefore the revenue Court should receive such a petition endorsed on a

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(24) *Hira Lal Banerjee* v. *Surendra Nath Sarbanga*, 91 I.C. 488=1926 Cal. 504.

(25) *Promotha Nath Ganguly* v. *Amiraddi*, 55 I.C. 178=24 C.W.N. 151. Also see *Bapurao* v. *Narayan Keshav Chande*, 103 I.C. 337=1927 Nag. 321 (suit under S. 7 (xi) (*cc*) but plea of lease improved, and plaintiff got decree on question of title raised by the defendants. *Held*, that Court-fee should have been payable on the market-value under S. 7 (v) of the Act).

(26) *Haladhur Pal* v. *Mongal Raja*, 1931 Cal. 333=34 C.W.N. 247=126 I.C. 777.

(27) *Promotha Nath Ganguly* v. *Amiraddi Sheikh*, 55 I.C. 178=24 C.W.N. 151.

(28) *Bapurao* v. *Narayan Keshao Ghande*, 103 I.C. 337=1927 Nag. 321.

(29) *Ramalinga Mudaliyar* v. *Ramaswami Iyer*, 119 I.C. 577=1929 Mad. 529=29 L.W. 760=1929 M.W.N. 239.

(30) *Sriram* v. *Jagat Narain*, 93 I.C. 291 (Oudh).

(31) *Girish Chandra Dutt* v. *Girish Chandra Mali*, 133 I.C. 689=1932 Cal. 6=54 C.L.J. 68.

stamp paper of the value of annas eight only.[32] The PATNA HIGH COURT holds that suit to eject a *Thikadar* after expiry of lease, is a suit to eject a "tenant" within the meaning of S. 7, (xi) (cc), as "the clause was intended to refer to all cases where the landlord seeks to recover the property from a person who has been his tenant, and whose tenancy has come to an end, or where the landlord by reason of some breach of covenant is entitled to re-enter."[33] A similar view was taken by the Calcutta High Court, in *Govindar Kumar v. Mohini Mohan Sen*,[34] where it has been pointed out that the words "including a tenant, etc.", after the word tenant amplify the meaning of the term "*tenant*" rather than restrict it. Consequently, it is not correct to hold that as soon as a notice to quit is served upon a tenant he ceases to be a tenant, and therefore this clause does not apply. "So long as a person remains a tenant, the landlord has no right to recover immoveable property from him. His right to do so arises only when the relationship between him and the tenant has ceased and the tenant has lost his right to remain in possession of the property."[35] Thus a suit for ejectment of a tenant alleging that the tenancy has terminated, is governed by S. 7, (xi) (cc), and the last clause in this paragraph is sufficient to indicate that the provision is meant to cover even those cases where a person was a tenant before, but his tenancy has been determined since.[36] The Privy Council have held likewise that the words "landlord and tenant" include an ex-landlord, and an ex-tenant.[37-38]

426. (5) Suits against tenant holding over.—A tenant "holding over," is a technical expression used in S. 116, Transfer of Property Act, which enacts that "if a lessee, or underlessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or underlessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in S. 106." This Section is supplemental to S. 111 (a), according to which a lease determines by efflux of time limited thereby. After his lease is determined the tenant has no right to continue in possession of the property. But if he continues in possession, the landlord may at once proceed to eject him, for his possession is then no longer legal, but only per-

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(32) 11 W.R. 90=2 B.L.R. (A.C.) 126.

(33) *Ramcharan Singh* v. *Sheo Dutta Singh*, 74 I.C. 619=2 Pat. 260 =1923 Pat. 380=4 Pat.L.T. 666, followed in *Telanga Marandi Mahi* v. *Chandra Mohand Singh*, 1933 Pat. 664.

(34) 1930 Cal. 42=57 Cal. 349=125 I.C. 726=33 C.W.N. 769.

(35) *Ibid.* 57 Cal. 349=1930 Cal. 42=125 I.C. 726, *supra*.

(36) *Telanga Marandi Majhi* v. *Chandra Mohan Singh*, 1933 Pat. 664. (*Held*, on *Ram Charan Singh* v. *Sheo Dutt Singh*, 74 I.C. 619=2 Pat. 260 =1923 Pat. 380).

(37-38) *Karmani Industrial Bank* v. *Satya Nirayan Shaw*, 1928 P.C. 227 (230).

missive. Such a person is a "tenant-on-sufferance," *i.e.*, who comes in by right, and holds over without right, and without the assent or dissent of the person next entitled. Such a tenant is deemed to be a tenant for an indeterminate period, if the landlord has assented to his continuance in possession; otherwise, in the absence of consent express or implied, or of anything from which a new tenancy may be inferred, he is not a tenant, and there is no relationship of landlord and tenant between him and his *quondam* lessor. It was held in *Narain* v. *Tukaram*,[39] by the NAGPUR JUDICIAL COMMISSIONER'S COURT, with reference to definitions of a tenant holding over, in Wharton's law lexican, and in Woodfall's Law of Landlord and Tenant, that where according to the plaintiff's allegations the defendant did not remain in possession after the expiry of the period, "without the agreement or *disagreement*" of the plaintiff, but in spite of a written notice to quit having been served on the defendant, the suit was not against a "tenant holding over", falling under S. 7, Cl. (xi) (cc), of the Court-Fees Act, but an ordinary suit for possession against a trespasser, which had to be valued for purposes of Court-fees and jurisdiction, under S. 7 (d), of the Act. A similar view was taken, by the same Court, in a later case of *Champat* v. *Balak Das*,[40] that the tenancy of a tenant holding over is created by occupation under an implied demise or agreement; consequently, where notice to quit has been given, and no demise or consent to the continuance of occupation can be implied, a suit for ejectment of the person so continuing in possession after a notice to quit and demand for possession, is virtually a suit for possession against a trespasser, falling under S. 7 (v) (*e*), of the Act. But, this view has been dissented from in *Vithaldas* v. *Ghulam Ahmad*,[41] by a Bench of the same Court. It was observed that "it is undoubtedly correct to say that a tenant or a tenant holding over is a trespasser and not a tenant of any kind after he has refused to comply with a proper notice to quit. But the claim in a suit must be regarded with reference to the facts existing when the cause of action accrued, not to the state of things when the suit was filed". According to the Bench, it is not the position of the defendant after his refusal to quit that is in question, but his position up to that refusal. "Up to the moment he gives rise to a cause of action by refusing to quit on demand, a tenant is still a tenant, and that is the point of time to which the suit for his ejectment in consequence of that refusal must be referred."[42] The CALCUTTA HIGH COURT has held, in *The Bengal National Bank* v. *Janoki Nath Roy*,[43] that the intention of S. 116, Transfer of Property Act is that the lessee holding over with the landlord's mere consent has still a lease but only from month to month: and he does not even

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(39) 74 I.C. 93=1923 Nag. 310.
(40) 84 I.C. 202=20 N.L.R. 124=1925 Nag. 131.
(41) 99 I.C. 438=1927 Nag. 156=23 N.L.R. 5.
(42) *Ibid.*
(43) 104 I.C. 484 (490)=54 Cal. 813=1927 Cal. 725.

get this if there be an agreement with the landlord that he is to be a tenant on sufferance, a mere licensee or a tenant at will. The tenant continuing in occupation under a special agreement for a further lease is a different case from the tenant holding over.[44] If at the expiry of the original term, the person who continues in occupation is not the lessee but his representative or assign there is nothing in S. 116, Transfer of Property Act, to enable the lessor by mere consent to convert such representative or assign into a monthly tenant. Such a person in the absence of agreement is a trespasser (*Cf. Vadapalli Narasimham* v. *Dronamraju Seetharama Murthy*).[45] Similarly it has been held by the Patna High Court, that the successors of the lessee who did not enter by a lawful demise or title were not tenants on sufferance, but trespassers, and S. 116 of the Transfer of Property Act had no application.[46] However, it has been held, by the Calcutta High Court, that a person who claims to be on the land on payment of rent after the demise of his father who was before his death holding over for a number of years, after the expiration of the terms of his lease, could not be held to be in the position of a trespasser on the land, against whom the plaintiff had to proceed by way of getting his title established in a properly constituted suit. The landlord can maintain a suit for ejectment, and such a suit will be governed by S. 7, (11) (cc), Court-Fees Act.[47]

427. (6) Suit against tenant at fixed rate.—A suit to eject a tenant at fixed rent, was held to require a Court fee stamp according to the market-value of the right in an old case by the Agra Court.[48] Similarly, it was held by the Allahabad High Court, that a suit to eject a tenant at fixed rates is a suit for the possession of land within the meaning of S. 7, paragraph (v), of the Court-Fees Act, and the valuation of such suit for the purposes of Court-fees, and of jurisdiction is the value of the subject-matter of the suit, that is to say of the tenant-right, not of the land itself nor of merely one year's rent.[49] These cases were prior to the amendment introduced by Act VI of 1905, which provides expressly for cases in which a landlord seeks to recover

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(44) *Ibid.* 104 I.C. 484 (490)=54 Cal. 813=1927 Cal. 725.

(45) *Ibid.* 104 I.C. 484 (490), citing 31 Mad. 163=18 M.L.J. 26= 3 M.L.T. 256. Also see and *Cf. Govinda Ram* v. *Dhulu Pala Dutt*, 1928 Cal. 753=32 C.W.N. 1113=116 I.C. 374. (*Held*, that a Tenant not holding over, is a trespasser holding over) and a suit for ejectment of such a tenant, whose tenancy is determined, does not fall within the meaning of S. 7 (xi) (*cc*) of the Court-Fees Act, and the suit must be valued otherwise than under its provisions.

(46) *Charan Mahton* v. *Kumar Kamakhya*, 86 I.C. 387=6 P.L.T. 586=6 P.L.T. 12=(1924) Pat. 313=1925 Pat. 216=4 Pat. 139. Cited in *Ram Rachhya Singh* v. *Kumar Kamakha*, 84 I.C. 98=1925 Pat. 357, and, *Kamakhya Narain Singh* v. *Khalik Ahmad*, 102 I.C. 821=1927 Pat. 305=8 P.L.T. 633.

(47) *Asutosh Pramanik* v. *Jibandhan Ganguly*, 1933 Cal. 822.

(48) *Ajoodhya Chowbey* v. *Daibee Singh*, 3 Agra Rev. 5.

(49) *Ram Raj Tewari* v. *Girnandan Bhagat*, 15 All. 63=12 A.W.N. (1892) 240, also see 27 P.R. 1910=5 I.C. 910; and U.B.R. (1902-1903), but *Cf.* 1 L.B.R. 303 (307).

possession from the tenant and the Court-fee payable has been greatly reduced.[50] An occupancy tenant is also liable to eviction under this clause.[1]

428. VALUATION OF SUIT TO EJECT A TENANT.—It has been noticed already that after the Amendment by Act VI of 1905, the value of a suit for possession of leased property is not the value of the immoveable property itself, but is to be valued for purposes of Court-fee at the amount of the rent payable for the year next before the date of the presentation of the plaint;[2] and the valuation for purposes of jurisdiction shall be the same, *i.e.*, follow the value as determined for the purpose of Court-fees.[3] Where the suit is by a person in possession of a portion of the building as well as the site on which the building stands, to eject a person occupying another portion of the building, the Court-fee payable is either under Sch. II, Cl. 17 (vi), on the ground that the relief is not capable of valuation at all, or if it can be valued, its value is to be determined under S. 7, Cl. (xi) (cc), at 12 times the monthly rent which the two portions would yield; but its value cannot be the market-value of the land and the buildings thereon under S. 7, (v), of the Act.[4] In a suit for ejectment and to recover possession of a raiyati land held on *patta* in an estate on an objection as to valuation the Subordinate Judge valued it on the value of land as a building site on the hypothetical assumption that the landlord would for some nazzar be willing to allow it to be so used as a building site. It was held, by the Madras High Court, that it was not open to the Court to value property on such a basis. Reading Ss. 11 and 151, Estates Land Act, it is clear that the land cannot be used for building purposes without the consent of the landlord.[5]

429. Cl. (d)—Suit to contest notice of ejectment.—A suit to contest a notice of ejectment is provided for by S. 45, Punjab Tenancy Act. The relation of landlord and tenant must subsist at the time the notice is issued. Any person to whom a notice of ejectment is issued must be allowed to come into Revenue Court, and contest it whether he admits that he is a tenant or

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(50) (*Chaudhri*) *Daryoo Singh* v. *Bharat Singh*, 3 I.C. 562 (F.B.) =6 A.L.J. 905=6 M.L.T. 611. Also see *Nandan Singh* v. *Debi Din*, 25 I.C. 975=12 A.L.J. 933 (Distinguishing and not following 15 All. 63 and 15 All. 363).

(1) *Punya Murthulu Venkata Rattamma* v. *Ghalasni Sreeramalu*, 99 I.C. 981=1927 Mad. 331.

(2) *Mohanlal* v. *Bhuteswar*, 83 I.C. 1=1925 All. 142, and *Ramchand* v. *Ramsukhdas*, 27 P.R. 1910=5 I.C. 910=210 P.L.R. 1910=30 P.W. R. 1910. Also see 38 Mad. 795, and 39 Mad. 873.

(3) *Nardan Singh* v. *Debi Din*, 25 I.C. 975=12 A.L.J. 933, *Cf.* 15 All. 63=A.W.N. (1892) 240, and 15 All. 363=A.W.N. (1893) 148, which no longer apply, *Cf.* also 3 I.C. 562=6 A.L.J. 905=32 All. 19, a case where the question was about the Court-fee payable in a suit for pre-emption.

(4) *Mulibai* v. *Vassibai*, 104 I.C. 412=1927 Sind 248, followed in *Tyabali* v. *Parpatibai*, 26 S.E.R. 29=1932 Sind 73=139 I.C. 95.

(5) *T. K. M. Alagappa Chetty* v. *Saminathan Chetty*, 1933 Mad. 367 (1)=142 I.C. 195, citing 16 Mad. 407=3 M.L.J. 185; and 24 Mad. 65.

claims some other status. A suit by a person served with a notice of ejectment, against the landlord, to contest the notice, questioning the legality of the notice, or claiming the value of improvements effected by the tenant, requires to be valued for purposes of Court-fees at a year's rental. As held in *Hoshnak Rai* v. *Ghulam Mustafa*, by Irving, F.C., in a case to contest a notice of ejectment the relief claimed may be in the alternative (*a*) non-ejectment, (*b*) compensation, but the suit is valued on the rental of the land without any regard for compensation claimed, the claim for compensation being regarded ancillary.[6] In Madras Presidency, such suits would be instituted under the provisions of S. 49, Madras Estates Land Act. It was held in *Bibi Nurjahan v. Morpan Mundul*,[7] that this sub-clause relates only to suits between landlord and tenant, "to contest a notice of ejectment" and it is manifest that in such suits it is the ryot and not the *malik* who must be the plaintiff: and the value of such suits has been specially declared to be one year's rental, and that amount should be the value for the purposes of calculating the Court-fees in appeals.[8] The Court-fee in a suit to eject a tenant as a tenant at will, is annas eight, under Sch. II, Cl. 5 of this Act.[9] The stamp required for a suit to contest a notice of ejectment on the ground that the plaintiff is entitled first to receive compensation for improvements effected by him to the land, before he could be ejected, should, under S. 7 (xi), (*d*), be valued at a year's rental, with no regard for value of improvements.[10] If ejectment were decreed, with compensation, and the tenant appealed claiming still non-ejectment and in the alternative more compensation, he would pay Court-fee on the rental value. But where the defendant landlord appeals only against the amount of compensation awarded, the Court-fee paid should be *ad valorem*.[11]

430. Cl. (e)—Suits to recover occupancy property.—This clause applies to suits by a tenant for recovery of possession of immoveable property in which plaintiff has occupancy rights against his landlord. This is the converse of the case provided under Cl. (cc). A suit by a tenant against his landlord and a stranger, (*viz.*, a licensee, or tenant of the landlord, or a trespasser) for recovery of occupancy rights, would not be covered by this paragraph. Where *A* leased out a certain mine for a term of years to the plaintiff, and subsequently, *A*, entered into an agreement with other persons to grant them a lease; and, the plaintiff unable to obtain possession sued *A*, and the other persons for

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(6) 11 L.L.T. 116.

(7) 11 C.L.R. 91.

(8) *Ibid.*

(9) *Ibid.*

(10) 111 P.R. 1883 (*Nurulla* v. *Attar Singh*); also see Reference under Court-Fees Act, 23 Mad. 84. (*Held*, that, as the claim for improvements was not the subject-matter of the suit, but was merely incidental to the decree for possession, and on grounds of convenience, the fee payable by an appellant in such a case should not be taktn into account for Court-fee.

(11) *Hoshnak Rai* v. *Ghulam Mustafa*, 11 L.L.T. 116.

possession of the mine, for mesne profits, etc., it was held that the suit did not fall within Cl. xi, sub-clause (*e*) of S. 7 of the Court-Fees Act, inasmuch as it was one not merely between the tenant and the landlord, but also between the tenant and other persons who claimed to have acquired an interest from the landlord.[12] Similarly, a suit for recovery of possession of land of which plaintiffs claim to be tenants, against the admitted landlords and persons who also claim to be tenants, is governed by the Court-Fees Act, S. 7 (v), and the value of the subject-matter of the suit is the value of the relief as stated in the plaint.[13] The PATNA HIGH COURT, takes the same view.[14] S. 7, (xi) (*e*), speaks of a tenant being "illegally ejected", and these words have been held to differ in scope from the word "dispossessed", in *Sundar Mal Marwari* v. *Murray*.[15] This interpretation was, however, not followed in *Juwala Singh* v. *Kingsley*,[16] but this latter ruling does not bear on the Court-Fees Act. It was, therefore, held, that a suit for possession by an occupancy tenant against his landlord on the basis of illegal ejectment falls under S. 7, (xi) (*e*) of the Court-Fees Act only when there is no question of title to be gone into. But when a question of title is involved, the case would fall under S. 7 (v) of the Act, and the Court-fee would be payable on the market-value.[17] The SIND JUDICIAL COMMISSIONER'S COURT has taken a view different from the Calcutta and Madras High Courts.[18] It points out that in *Farzand Ali* v. *Mohanlal Puri*,[19] a suit was filed by a tenant against his landlords and a third person whom the landlords had inducted into the land, as a *thikadar*, and all three defendants thereafter dispossessed the plaintiff, and the suit, consequently, was held not to fall within this Clause. The defendant 3, was both a tort-feasor and a trespasser. The Sind Court demurred to the proposition that in every case where a person inducted on the land by the landlord is joined as a party to a suit between the dispossessed tenant and the landlord, such suit does not fall within Cl. (xi) (*e*) of S. 7. It observed that

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(12) *Sundarmal Marwari* v. *Murray*, 16 C.L.J. 375=16 I.C. 963, followed. *Furzandali* v. *Mohanth Lal Puri*, 32 Cal. 268. *Held*, that this clause has no application to a suit for possession of an occupancy holding brought by the tenant against the landlord, and the persons whom the landlord has inducted into the land, and *Palaniappa Chettiar* v. *Sithravelu Servai*, 31 Mad. 14=3 M.L.T. 8=17 M.L.J. 478. (*Held*, that the words "occupancy of land", and "ejected," in Cl. (xi) (*c*) are applicable to cases where defendants are ryots or persons in actual possession and not to cases where defendants only lay claim to the *melwaram* rights in the land.)

(13) *Ram Ekbal Singh* v. *Baldeo Singh*, 25 I.C. 507=19 C.L.J. 418.

(14) *Krishna Chandra Gauntia* v. *Raja Mahakur*, 94 I.C. 19=5 Pat. 208=1926 Pat. 251.

(15) 16 I.C. 963=16 C.L.J. 375, cited in 94 I.C. 19=5 Pat. 208=1926 Pat. 251, *supra*.

(16) 21 I.C. 224=17 C.W.N. 1201, cited in 94 I.C. 19=5 Pat. 208=1926 Pat. 251, *supra*.

(17) *Krishna Chandra Gauntia* v. *Raja Mahakur*, 94 I.C. 19=5 Pat. 208=1926 Pat. 251.

(18) *Secretary of State for India* v. *Dinshaw Navroji*, 87 I.C. 1002 (1007)=1925 Sind 275.

(19) 32 Cal. 228.

"such a person may be a proper party to the suit, but is not in every case a necessary party to the suit, and the fact that he is joined as a proper party to the suit does not thereby take away the suit from the purview of Cl. (xi) (*e*), it is still a suit between the tenant and the landlord."[20] The ruling of MADRAS HIGH COURT in *Palaniappa Chetty* v. *Sithravelu*,[21] was explained as having been based on two grounds; "the second ground which would appear to have been a good ground was that prior to the Amending Act VI of 1905, Cl. xi (*e*), was limited to a suit for recovery of occupancy of land, and did not extend to a suit for occupancy of immoveable property as at present, and as in that case the claim was in respect of melvaram rights and not a suit by dispossessed ryot for physical possession of land the suit was rightly held not to fall within this clause". The Sindh Court holds that the Court Fees Act being a fiscal enactment must in cases of ambiguity be construed in favour of the public. The interpretation put upon Cl. (xi), referring to suits between landlord and the tenant, therefore, was that this clause is not limited to suits where the landlord and the tenant alone are parties, and would apply to a suit of this nature where a person is joined as a proper party to the suit.

431. Cl. (f).—Suits for abatement of rent.—This class of suits are the converse of suits by landlord for enhancement of rent. Cl. (*f*), deals with suits by tenants, where they can claim an abatement of rent, by the terms of a lease, on the happening of a contingency, or where it is provided for by statute, *e.g.*, in S. 38 of the Madras Estates Land Act, 1908; or by S. 38 of the Bengal Tenancy Act, 1885, or by S. 28 of the Punjab Tenancy Act, 1887. The valuation of such suits is at a year's rental, which "denotes a period of 365 days reckoning backwards from the date of presentation of plaint."[22]

8. The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

Fee on memorandum of appeal against order relating to compensation.

Synopsis.

I. Scope of section.
II. Application of section.
III. Appeals by co-share on question of title or apportionment.

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(20) 87 I.C. 1002 (1007)=1925 Sind 275, *supra*.
(21) 31 Mad. 14=3 M.L.T. 8=17 M.L.J. 478.
(22) *Ghasi Ram* v. *Hargovind*, 28 All. 411=3 A.L.J. 244=26 A.W. N. 66.

IV. Appeals where no compensation allowed.
V. Appeals against orders not amounting to a decree.
VI. Court-fee on statutory addition.
VII. Power of appellate Court.

432. SCOPE OF SECTION.—This section deals with the fee payable on a memorandum of appeal against an order relating to compensation under any Land Acquisition Act for the time being in force.[23] The Acts in force are the Land Acquisition Act, I of 1894; and the Land Acquisition Act, (Mines and Minerals) Act XVIII of 1865. Section 54, Land Acquisition Act of 1895, provides for an APPEAL TO THE HIGH COURT from the award, or any part of the award of the Court in any proceedings under that Act. No further right of appeal was given by express enactment as originally passed.[24] In order to give the right of appeal to the Privy Council, Act XIX of 1921, was passed adding a sub-section to S. 26, and amending S. 54 of the Land Acquisition Act of 1894. Cl. 2, was added to S. 26, saying that "every such award shall be deemed to be a decree, and the statement of the grounds of every such award a judgment within the meaning of S. 2, Cl. 2, and S. 2, Cl. 9, respectively of the Code of Civil Procedure, 1908."

THE SCHEME OF THE LAND ACQUISITION ACT, is that an award is made by the Land Acquisition Officer as an arbitrator. A party who objects to the award may ask the Land Acquisition Officer to make a reference to the Court under S. 18, and the Court may, for sufficient reasons, increase the award and the amount awarded by the Court becomes the award, and an appeal will lie against such award under S. 54 of the Land Acquisition Act, to the High Court; and now, a further appeal lies to the Privy Council. S. 8 is in Chapter III of the the Act, but the provision is not inconsistent with the heading of the chapter, as observed in the Full Bench Patna case of *Krishna Mohan Pandey* v. *Raghunandan Pandey*,[25] because when the Court-Fees Act was passed, by the Land Acquisition Act, then in force such appeals lay to the District Judge. S. 8 of the Court-Fees Act, is not in itself a charging section. It provides a rule for computation of the fee payable under the Act in a certain class of cases, on the assumption that *ad valorem* fee is chargeable,[26] and it lays down the principle on which Court-fee

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(23) *Krishna Mohan Pandey* v. *Raghunandan Pandey*, 87 I.C. 137 =(1925) Pat.C.W.N. 65=1925 Pat. 392=4 Pat. 336=6 P.L.T. 262 (F.B.).

(24) *Rangoon Botatoung Co., Ltd.* v. *Collector of Rangoon*, 16 I.C. 188=40 Cal. 21=16 C.W.N. 961=12 M.L.T. 195=(1912) M.W.N. 781=16 C.L.J. 245=23 M.L.J. 276=14 Bom.L.R. 833=10 A.L.J. 271=5 Bur.L.T. 205=6 L.B.R. 150=39 I.A. 197 (P.C.).

(25) 4 Pat. 336=87 I.C. 137=1925 Pat. 392 (F.B.). *supra* (F.-n. 23), also see, In re *Ananda Lal Chakrabutty*, 1932 Cal. 346=35 C.W.N. 1103=59 Cal. 528=137 I.C. 469.

(26) In re *Ananda Lal Chakrabutty*, 59 Cal. 528=1932 Cal. 346=35 C.W.N. 1103=137 I.C. 469.

should be calculated on the memorandum of appeal in land acquisition cases.[27]

433. APPLICATION OF THE SECTION.—(1) APPEALS BY PERSONS CLAIMING COMPENSATION. S. 8 of the Court-Fees Act is applicable only to appeals by persons claiming the compensation,[28] and where the claimant claims more than the amount awarded by the lower Court.[29] According to the first part of the section its provisions would seem to apply to all appeals in land acquisition cases whoever may have filed the appeal,[30] and, there is a dictum in *Kasturi Chetti* v. *Deputy Collector, Bellary*,[31] *that* "S. 8 is a special provision applicable to appeals against all orders, including awards, relating to compensation, under the Land Acquisition Act." But, this dictum is "too widely put," as observed by the Rangoon High Court, in *Special Collector of Rangoon* v. *Ko Zi Nai*,[32] and it appears to be reasonably clear from the second part of the section that it contemplates appeals by the persons claiming under the award, as a comparison can only be between the amount awarded to, and claimed by, such appellant.[33] In the case of an appeal by the Crown, the meaning of the words would have to be strained, *viz.*, the words "the amount claimed by the appellant" would have to be interpreted as meaning "the amount the appellant claims should have been awarded."[34]

(2) APPEALS BY CROWN, AGAINST THE AWARD.—It has been held that on a proper construction of the section, it has no application, where the Crown is the appellant.[35] If the section applies to an appeal by the Crown, one has to put a forced construction on the closing words of the section[36] The Crown is not a claimant, and it is impossible, therefore, to compute the Court-fee according to the difference between the amount awarded, and the amount

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(27) *Mahomed Ali Amjad Khan* v. *Secretary of State*, 30 Cal. 501 (502).

(28) *The Secretary of State for India* v. *Basawa Singh*, 17 I.C. 764=57 P.R. 1913=17 P.L.R. 1912=19 P.W.R. 1913.

(29) *Mahalinga Kudamban* v. *Theetharappa Mudaliar*, 115 I.C. 345=1929 Mad. 223=56 M.L.J. 387=(1929) M.W.N. 62=29 L.W. 237.

(30) *Special Collector of Rangoon* v. *Ko Zi Na*, 1928 Rang. 197=6 Rang. 281=110 I.C. 870.

(31) 21 Mad. 269, cited in In re *Assistant Commissioner of Labour*, 78 I.C. 435=1924 Mad. 489=46 M.L.J. 150; 19 L.W. 207=(1904) M.W.N. 108=34 M.L.T. 357, also see *Puran Chand* v. *Emperor*, 92 I.C. 991=1926 Lah. 343.

(32) 1928 Rang. 197=6 Rang. 281=110 I.C. 870, *supra*.

(33) In re *Ananda Lal Chakrabutty*, 1932 Cal. 346=35 C.W.N. 1103=59 Cal. 528=137 I.C. 469.

(34) 6 Rang. 281=110 I.C. 870=1928 Rang. 197 (198), *supra*.

(35) In re *Assistant Commissioner of Labour*, 78 I.C. 435=1924 Mad. 489=46 M.L.J. 150=19 L.W. 207=(1904) M.W.N. 108=34 M.L.T. 357, also see *Mahalingo Kudumbun* v. *Theetharappa Mudaliar*, 115 I.C. 345=1929 Mad. 223=50 M.L.J. 387=(1929) M.W.N. 62=29 L.W. 237.

(36) 6 Rang. 281=110 I.C. 870=1928 Rang. 197 (198), *supra*.

claimed by the appellant.[37] The PUNJAB CHIEF COURT, in the *Secretary of State* v. *Basawa Singh*,[38] and the Madras High Court, in *Mahalinga* v. *Theetharappa*,[39] have held that S. 8 is applicable only to appeals by persons claiming compensation.

(3) APPEALS BY CO-SHARERS.—Their Lordships of the Privy Council, have referred to the two perfectly separate and distinct forms of procedure contemplated under the Land Acquisition Act, 1894. It was observed in *Ramchandra Row* v. *Ramchandra Row*,[40] that the first is that necessary for fixing the amount of compensation, and this is described as an award. When once the award as to the amount has become final, all questions as to the fixing of the compensation are at an end. Thereafter, when the sum has been deposited in Court, under S. 31, (ii), the functions of the award have ceased, and all that is left is a dispute between interested people as to the extent of their rights, and the apportionment of the compensation. These disputes form no part of the award, and S. 54, does not give an appeal to High Court in respect of disputes as between persons claiming compensation. Such disputes would be definitely beyond S. 8, Court-Fees Act. Similarly, an order made by a Court in a proceeding under the Land Acquisition Act, directing a party, to whom a sum of money awarded as compensation under the Act has been paid under a previous order, to refund the money, is not award, or a portion of the award within the meaning of S. 54 of the Land Acquisition Act; and S. 8, does not apply to an order which is not appealable.[41]

434. Art. 17 (iv), Sch. II; not applicable to appeals by claimant.—The MADRAS HIGH COURT, held in *Kasturi Chetti* v. *Deputy Collector, Bellary*,[42] that "Art. 17 (iv) of Sch. II of the Court-Fees Act, prescribes generally the proper stamp for a suit to set aside an award, but S. 8 of the same Act is special provision applicable to appeals against all orders including awards, relating to compensation under the Land Acquisition Act, and the special provision overrides and governs the general provision in accordance with the ordinary and well established rules of construction". The LAHORE HIGH COURT, has followed this view in *Puranchand* v. *Emperor*,[43] and has further observed that it cannot be said that the appeal is incapable of valuation.

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(37) 6 Rang. 281=110 I.C. 870=1928 Rang. 197 (198) also see 1932 Cal. 346=35 C.W.N. 1103=59 Cal. 528=137 I.C. 469, *supra*.

(38) 17 I.C. 764=57 P.R. 1913=17 P.L.R. 1912=19 P.W.R. 1913.

(39) 115 I.C. 345=1929 Mad. 223=56 M.L.J. 387=(1929) M.W.N. 62=29 L.W. 237, *supra*.

(40) 67 I.C. 408=45 Mad. 320=30 M.L.T. 154=16 L.W. 1=43 M.L.J. 78=(1922) M.W.N. 358=20 A.L.J. 684=26 C.W.N. 713=35 C.L.J. 545=24 Bom.L.R. 968, (P.C.).

(41) *Nobin Kali Debi* v. *Banalata Debi*, 32 Cal. 921.

(42) 21 Mad. 269.

(43) 92 I.C. 991=1926 Lah. 343=27 P.L.R. 91.

According to BOMBAY HIGH COURT,[44] where in an appeal by the claimant, under the Land Acquisition Act, the substantial question is whether the claimant is entitled to such compensation as is awarded by the lower Court, or to the higher compensation which he claims in respect of the property acquired, Court-fee, in respect of the additional compensation claimed in the appeal, is payable *ad valorem* under the provisions of S. 8 of the Act. The CALCUTTA HIGH COURT holds that the object of S. 8 is not to impose an *ad valorem* charge; it assumes that the Act has already made an *ad valorem* charge laid down either under S. 4, or under S. 6, and contained in Sch. I, Art. I. "The purpose of the section, is to say that when you come to make a charge under Art. 1, Sch. I, the figure which is to be taken as the appropriate figure under column 2, is the figure to be computed by finding out the difference between the amount awarded to the appellant, and the amount claimed by him."[45]

435. Art. 17 (iv), Sch. II; not applicable to appeals by Crown.—The Punjab Chief Court, held in the *Secretary of State* v. *Bawa Singh*,[46] that as regards an appeal by the Secretary of State against an award of the Court, the Court-fee required is Rs. 10, only under Art. 17 (iv), Sch. II of the then Act [corresponding to Art. 17-A (ii) of the present Act]. This decision has been doubted by the MADRAS HIGH COURT,[47] because it involves the inclusion of a reference to a Court under the Land Acquisition Act in the words, "*a suit to set aside an award*", which is certainly not giving the ordinary meaning to those words. It was held, therefore, that an appeal by the Crown against an award of compensation by the Chief Judge of the Presidency Small Cause Court in a land acquisition case must bear Court-fee prescribed under Art. 1, Sch. 1, of the Act.[48] The view taken by the Punjab Chief Court was not accepted by the CALCUTTA HIGH COURT, in the *Secretary of State* v. *Banerjee*.[49] Walmsley, J., observed that

> "The Court-Fees Act makes it clear that a claimant must pay *ad valorem* fees, but the wording of the section that makes that provision suggests that when the Secretary of State appeals for a reduction of the sum awarded some other rule applies; and, if the Court-fees payable by a claimant are not governed by the ordinary rules affecting decrees it seems that they cannot be applicable in the case of an appeal by the Secretary of State. If that is so, the only article in the Court-Fees Act under which such an appeal can be classed, though not very appropriately is Art. 17 (4), an appeal to set aside."[50] He added, however, "that the position has been changed by

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(44) *Mangal Das Girdhardas* v. *The Assistant Collector, Ahmedabad*, 64 I.C. 582=45 Bom. 277=1921 Bom. 325.

(45) In re *Ananda Lal Chakrabutty*, 59 Cal. 528=1932 Cal. 346=35 C.W.N. 1103=137 I.C. 469.

(46) 17 I.C. 764=57 P.R. 1913=17 P.L.R. 1912=19 P.W.R. 1913.

(47) In re *Assistant Commissioner of Labour*, 78 I.C. 435=1924 Mad. 489=46 M.L.J. 150=1924 M.W.N. 108.

(48) *Ibid.* 78 I.C. 435=1924 Mad. 489, *supra*.

(49) 97 I.C. 140=1927 Cal. 45.

(50) *Ibid.*

the recent amendment of the Land acquisition Act. For a purpose unconnected with the matter of Court-fees the decision of the Judge has been made a decree, and the result is that the Secretary of State is appealing against a decree. Where a claimant demands an enhancement of the Judges' award he also is appealing against a decree, and the special provision of S. 8 of the Court-Fees Act may now, probably, be regarded as redundant. At any rate the inference drawn from the discrimination made between the claimant and the Secretary of State is no longer warranted.''[1]

The view of the CALCUTTA HIGH COURT that an award made on a deference to the Land Acquisition Judge, being a decree, *ad valorem* Court-fees must be paid on a memorandum of appeal, under Sch. I, Art. 1, Court-Fees Act,[2] has been followed by the OUDH CHIEF COURT, in *Secretary of State* v. *Baij Naith*,[3] which dissents from the decision of the Punjab Chief Court, in *Secretary of State* v. *Wasawa Singh*,[4] and remarks that ''no reasons have been given in this decision for the view''. The same remark occurs, in respect of the view taken by the Punjab Chief Court above, by the RANGOON HIGH COURT, in *Special Collector of Rangoon* v. *Ko Zi Na*.[5] It is pointed out by the Rangoon High Court that the proceedings, under the Land Acquisition Act, in a District Court cannot be regarded as a ''*suit to set aside an award,*'' within the provisions of Art. 17 (iv), Sch. II of the Act. The District Court proceedings certainly have reference to an award, but are instituted on reference by the Collector, and not initiated by a plaint, and they are not in the strict sense of the word a ''*suit*'' at all still less does it seem possible to hold the proceedings to be a suit to *set aside* an award.[6] ''In proceedings under the Land Acquisition Act the Court is not asked simply to avoid the award of the Collector. The Court is asked to take the place of the Collector and itself to make an award, and an appeal from a Court's order is clearly valuable at the amount by which the appellant wishes the sum awarded to be increased, or decreased''.[7] Where S. 8 is not applicable, that is, where the appeal is by the Crown against the award, the only provision of the Court-Fees Act applicable is Art. 1, of the First Schedule, and the Court-fee payable is an *ad valorem* fee.[8] Such a case

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(1) 97 I.C. 140=1927 Cal. 45, also see *Rai Bahadur Narsingh* v. *Secretary of State*, 29 C.W.N. 822=1925 P.C. 91=86 I.C. 556 =6 Lah. 69=23 A.L.J. 113=27 Bom.L.R. 783 (P.C.); 48 M.L.J. 386 =2 O.W.N. 137=L.R. 6 A. (P.C.) 64. (*Held*, that by virtue of sub-S. (2) of S. 26 of the Land Acquisition Act, now every award is appealable as a decree, in the same manner as if it were a judgment in an ordinary suit).

(2) 97 I.C. 140=1927 Cal. 45.

(3) 1932 Oudh 224=9 O.W.N. 396=138 I.C. 199.

(4) 57 P.R. 1913=17 I.C. 764=17 P.L.R. 1912=19 P.W.R. 1913.

(5) 6 Rang. 281=110 I.C. 870=1928 Rang. 197.

(6) *Ibid.* 1928 Rang. 197, *supra.*

(7) *Ibid.*

(8) *Mahalinga Kudumban* v. *Theetharappa Mudaliar*, 115 I.C. 345= 1929 Mad. 223=56 M.L.J. 387=(1929) M.W.N. 62=29 L.W. 237, citing *Sheorattan Lal* v. *Mohri*, 21 All. 354=(1899) A.W.N. 96, and *Cf. Trimaysi Dasi* v. *Krishnalal Dey*, 14 I.C. 724=39 I.C. 906=17 C.W.N. 933, also see *Kasturi Chetti* v. *Deputy Collector*, 21 Mad. 269.

cannot be brought under the provisions of Cl. (vi) of Art. 17, Sch. II, unless it is established that it is not possible even to state approximately a money-value for the subject-matter in dispute.[9]

436. APPEALS BY CO-SHARER, ON QUESTIONS OF TITLE OR APPORTIONMENT.—Where some *Inam* lands were acquired under the Land Acquisition Act, and the award passed by the Land Acquisition Officer was referred to the civil Court under S. 30, on the question of the claims of the contending parties and the sub-judge held that the tenants had no occupancy, rights in the land, and that the whole of the compensation should be paid to the Inamdar; and the tenants appealed, it was held by the MADRAS HIGH COURT:—[10]

(1) that a decision in a reference under S. 30, is not an award within the meaning of S. 54, Land Acquisition Act,

(2) that the litigation in Court in which the civil rights of parties were determined, though not called a suit, yet is a civil proceeding to which the Civil Procedure Code is applicable and such a decision is a decree within the meaning of S. 2 (ii), Civil Procedure Code, against which an appeal lies under S. 96, Civil Procedure Code,

(3) that the appeal not being against the amount of the award, was not an appeal under S. 54 of the Land Acquisition Act, which would lie to the High Court but it was an appeal only against an order determining civil rights of two sets of contending parties, and the appeal lay to the district Judge as the amount involved was less than Rs. 5,000[11]

(4) That S. 8 could not apply to the case as it was not an appeal against an award; and there was no dispute as regards the amount of compensation awarded. That there is no specific provision as regards appeals in such cases, and the only other provision of the Court-Fees Act applicable to a case like this is Art. 1, Sch. I of the Act, under which the Court-fee is payable *ad valorem*.[12] This was in conformity with the practice in Madras, Allahabad, and Calcutta High Courts.[13] The BOMBAY HIGH COURT has held, that in an appeal from an order for apportionment of compensation between the Government and the claimant the question amounted to a determination of the amount payable by the Government to the claimant, and the Court-fee should be

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(9) *Banwari Lal* v. *Sheo Sankar*, 13 C.W.N. 815=1 I.C. 670.

(10) *Mahalinga Kudumban* v. *Theetharappa Mudaliar*, 115 I.C. 345=1929 Mad. 223=56 M.L.J. 387=1929 M.W.N. 62=29 L.W. 237, followed in *Venkata Reddi* v. *Adhinarayana*, 1929 Mad. 351=52 Mad. 142=119 I.C. 42.

(11) *Ramchandra Rao* v. *Ramchandra Rao*, 67 I.C. 40=45 Mad. 320 (329)=1922 P.C. 80=49 I.A. 129, disapproving of the decision in *Trinayani Dasi* v. *Krishnalal Dey*, 6 I.C. 157=17 C.W.N. 935, and *Balaram* v. *Shian Sunder*, 23 Cal. 526.

(12) *Ibid.* 115 I.C. 345 (348), *supra.*

(13) *Sheo Rattan Rai* v. *Mohri*, 21 All. 354=A.W.N. (1899) 96; also see *Trinayani Dasi* v. *Krishnalal Dey*, 14 I.C. 724=39 Cal. 906=17 C.W.N. 933.

ad valorem on the value of the land.[14] The LAHORE HIGH COURT has held, in *Muhammad Suleman* v. *Ghamandi Lal,* that in an appeal by co-sharer from an order directing compensation to be made to certain persons, for a share (which is definitely ascertained) compensation *ad valorem* is to be paid on the amount of the compensation claimed in the appeal, and a Court-fee stamp of Rs. 10, is insufficient.[15]

437. **APPEALS WHERE NO COMPENSATION ALLOWED.**—Where no compensation has been allowed by an award under Land Acquisition Act, Court-fee payable on the memorandum of appeal is the *ad valorem* Court-fee on the amount claimed.[16] Where, on a reference by the Land Acquisition Officer under S. 18, Land Acquisition Act, the District Judge held a defendant, who was a widow, entitled to a life interest in the compensation money awarded for the *melwaram,* but on account of the limited interest held by the widow, he, under S. 32, of the Act, ordered the money to be invested in a Bank; and, the reversioner appealed claiming that the compensation was payable to him alone, *ad valorem* fee was not necessary as on a prayer for recovery of the money from the successful claimant; because here the money was held in trust or *custodia legis*: and a bare declaration was sufficient.[17]

438. **APPEALS AGAINST ORDERS NOT AMOUNTING TO A DECREE.**—Where the District Judge rejects an application for apportionment, and the petitioner is referred to the civil Court for filing a regular suit, the order in question is not a decree, and the Court-fee on the memorandum of appeal against such an order is not required to be paid *ad valorem,* under Art 1, Sch. I of the Act, but a fixed Court-fee is chargeable under Sch. II, Art. 11 of the Court-Fees Act.[18] But, where a Court orders the to be invested in G.P. Notes, and the shebait is directed, under S. 32 of the Land Acquisition Act to draw interest only, the order in question is a decree, and has to be stamped for purposes of Court-fee, under S. 8 of the Act, at the money-value of the relief which is capable of estimation.[19] An order as to the disposal of compensation money, on a reference under S. 18 of the Land Acquisition Act, is appealable as from an original decree, and requires an *ad valorem* Court-fee stamp.[20]

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(14) *Mangaldas Girdhardas,* 64 I.C. 582=45 Bom. 277=23 Bom.L.R. 148 (F.B.).

(15) 1931 Lah. 343.

(16) *Puran Chand* v. *Emperor,* 92 I.C. 991=1926 Lah. 343.

(17) *Thammayya Naidu* v. *Venkataramanamma,* 1932 Mad. 438=62 M.L.J. 541=1932 M.W.N. 420=35 M.L.W. 618=55 M. 641=139 I.C. 131.

(18) *Hurrish* v. *Bhoba Tarini,* 8 C.W.N. 321.

(19) *Trinayani Dasi* v. *Krishnalal Dey,* 39 Cal. 906=17 C.W.N. 933 (935)=14 I.C. 724; also see *Mahammad Ali* v. *Ahammad Ali,* 26 Mad. 287, and *Shiva Row* v. *Nagappa,* 29 Mad. 117.

(20) *Sheo Ratan Rai* v. *Mohri,* 21 All. 354; and *Balaram* v. *Shyam Sundar,* 23 Cal. 531.

439. COURT-FEE ON THE STATUTORY ADDITION.—It was held by the MADRAS HIGH COURT in *Kapaka Brahmanandam* v. *Secretary of State*,[21] that the extra amount of compensation money claimed by an appellant in an appeal, under the Land Acquisition Act, should under S. 8 of the Court-Fees Act include also the 15 per cent. statutory addition on the market-value, and that he should pay Court-fees on the total amount including the 15 per cent. It was observed that "an appeal is different from the claim put forward by him before the Collector. When once the Court, on a reference to it under S. 18 of the Land Acquisition Act determines the amount of compensation to be awarded for the land acquired, the claimant, if dissatisfied with the amount of compensation so awarded by the Court, should, in case he prefers an appeal, value his appeal at the figure which represents the difference between the amount of compensation awarded to him and the amount of compensation that he claims in the appeal."

440. POWER OF APPELLATE COURT.—Of course, it is open to an appellant in a land-acquisition appeal, as in any other appeal in which he claims a sum of money from the other side, to give up a portion of his claim, and confine his claim to any particular amount to which he may restrict his claim in appeal. In such cases he is, of course, bound to pay Court-fee only on the amount to which he has confined his claim in the appeal; but in such a case in the event of success in his appeal the decree of the appellate Court should award only the amount claimed by him in the appeal, and no more."[22] A different view has been taken by the Calcutta High Court, in an unreported case.[23] It was held by the CALCUTTA HIGH COURT, in *Percival* v. *Collector of Chittagong*,[24] that in the generality of cases, an appellate Court cannot pass a decree for a larger amount than that claimed in the memorandum of appeal, unless, before the judgment is pronounced, an amendment of the memorandum of appeal is allowed, and the additional Court-fee paid in. "It is of course open to the appellant to appeal for the whole amount disallowed by the Court below, or only in respect of a part thereof. He must choose his own course."[25]

Power to ascertain nett profits or market-value.

9. If the Court sees reason to think that the annual nett profits or the market-value of any such land, house or garden as is mentioned in section 7, paragraph 5 and 6, have or has been wrongly estimated, the Court may for the purpose of computing the fee payable in any suit therein men-

(21) 122 I.C. 523=1930 Mad. 45=53 Mad. 48=57 M.L.J. 357 =(1929) M.W.N. 599=30 L.W. 242.

(22) *Ibid.* 1930 Mad. 45=53 Mad. 48=122 I.C. 523, *supra.*

(23) *Cf.* F.A. 314 of 1917—per Rankin, C. J. and Mookerjee, J. (Basu's Court Fees Act, p. 160).

(24) 30 Cal. 516.

(25) *Ibid.*

tioned, issue a commission to any proper person directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.

Synopsis.

1. Scope, and application.
2. "If the Court-fees reason to think."
3. Judicial investigation.
4. The appointment of a Commission.
5. Issuing charts of valuation.
6. Investigation by Court.
7. Power of Court to take evidence.
8. Suit whether includes appeals.

441. SCOPE AND APPLICATION.—Ss. 9 and 10 of the Court-Fees Act indicate that the legislature foresaw that plaints in suits for possession or pre-emption of lands, houses, or gardens, may, and will, be received about which a doubt will arise, and regarding which inquiry will show that the whole of the Court-fee prescribed has not been paid.[26] These sections are enacted giving a Court power to remedy the defect and to carry out the intention and object of the Act that the revenue shall not be defrauded, and that full Court-fee shall be paid before the hearing is further proceeded with, whatever be the stage at which the hearing may have arrived when the mistake is detected.[27] These sections provide machinery for ascertaining the value of land and houses, the subject-matter of a suit when the Court thinks that the value has been wrongly estimated to the detriment of the revenue.[28] The section merely lays down the procedure for inquiry to be followed when the Court is of opinion that the suit has been undervalued.[29] The powers under this section are exercisable at any stage of the suit, prior to its final disposal.[30]

442. "IF THE COURT SEES REASON TO THINK".—These opening words of S. 9, have been noticed in the Calcutta case of *Jalekha Bibi* v. *Danis Mahammad*,[31] and it was observed that "for the purpose of these opening words, there is no illegality in any reference to a chart, or to a Gazetteer, or to anything else that will assist. This is not a question of judicial decision. The Court merely sees reason to think that the suit is under-valued, and that by itself will hurt nobody. But if the Court wants this matter to be pursued, and it is a matter upon which evidence of external facts is plainly necessary, the Court must undertake the investigation in a judicial manner." Similarly, it has been held

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(26) *Hari Ram* v. *Akbar Hussain*, 29 All. 749 (759) (F.B.).

(27) *Ibid.* 29 All. 749 (759) (F.B.), also see F.-n. 30 below.

(28) *Krishna Mohem Pandey* v. *Raghunandan Pandey*, 4 Pat. 336 =87 I.C. 137=1925 Pat. 392 (F.B.).

(29) *Hari Pada Chakrabarti* v. *Dwi Jenra Narain Roy*, 5 C.L.J. 28, notes.

(30) *Valiya Kesava Vadhyar* v. *Suppa Nair*, 2 Mad. 308; also see *Mahadei* v. *Ram Kishendas*, 7 All. 528, and, *Krishnasami* v. *Sundarappayyar*, 18 Mad. 415.

(31) 1930 Cal. 65=122 I.C. 630=57 Cal. 587=50 C.L.J. 164 =33 C.W.N. 952.

in *Hari Pada Chakrabarti* v. *Dwijendra Narain Roy*,[32] that it is not open to the Court without any evidence on the point, and without following the procedure prescribed by S. 9, to hold that the land in suit is worth more than the present value. This procedure is not to be adopted as a mere matter of course,[33] but when a plaint has been registered, and a Court having reason subsequently to think that the market-value, or nett annual profits of the subject-matter of the claim has been wrongly estimated, it is within the Court's exercise of a discretionary power ot hold an inquiry either *per se*, or *per alium* through a Commissioner appointed for the purpose, to determine whether a sufficient Court-fee has not been paid.[34]

443. JUDICIAL INVESTIGATION.—"S. 9, points out one manner. It says that the Court may issue a Commission to any proper person directing him to make a local or other investigation and report it. If that Commission is issued, and if a report is made, it is clear that then the learned judge has a judicial duty to come to a decision on the basis of the Commissioner's report."[35] But, in the case of *Hari Ram* v. *Akbar Husain*,[36] it has been observed by the learned judges that the mere fact that a Court can issue a commission shows that the Court can make itself a judicial enquiry if it is so minded. And, consequently, it has been held that a judge would be within his rights, if he held this judicial enquiry either himself or by means of a commission.[37] Indeed, the conclusion reached from a history of Ss. 9 and 10 of the Court-Fees Act, is that as an ordinary rule the Court should hold the investigation in person; only when such investigation cannot be conveniently held by the Court in person is it to issue a commission to a proper officer to hold the investigation on its behalf.[38]

444. THE APPOINTMENT OF A COMMISSION.—These investigations should not be embarked upon without due reason. The CALCUTTA HIGH COURT observes that "this Court has always discharged, and I hope it always will discharge, the appointment of a commission under S. 9, Court-Fees Act, for the reason that it is very apt to be oppressive to the parties."[39] "In particular if a commission is ordered under this section not at the instance of the plaintiff, there is no power to make the plaintiff deposit the costs of the commission."[40] Such a commission when issued, is a commission under the Civil Procedure Code, and what the Commissioner may do, and what the duty of the learned judge is, is laid down quite clearly by the Civil Procedure Code.[41]

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(32) C.L.J. 28, notes.
(33) *Jalekha Bibi* v. *Danis Mahommed*, 1930 Cal. 65 (68).
(34) *Hari Ram* v. *Akbar Hussain*, 29 All. 749 (F.B.).
(35) *Jalekha Bibi* v. *Danis Mahommed*, 1930 Cal. 65 (67).
(36) 29 All. 749 (F.B.).
(37) *Jalekha Bibi* v. *Danis Mahommed*, 1930 Cal. 65 (67).
(38) *Hari Ram* v. *Akbar Hussain*, 29 All. 749 (756) (F.B.).
(39) *Jalekha Bibi* v. *Danis Mahommed*, 1930 Cal. 65 (68).
(40) *Ibid.* 1930 Cal. 65 (68).
(41) *Ibid.* 1930 Cal. 65 (67).

445. ISSUING CHARTS OF VALUATION.—The propriety of the issue of a chart of valuations sent round by a District Judge to the subordinate Courts in the district, for their guidance, is over questionable. S. 9, provides that the Court may if it questions valuation issue a commission for such local investigation as is necessary. But, it makes no provision for a chart in which the valuation is set out of the various classes of land in the district, to be issued by the District Court to the subordinate Courts, and this seems to be a serious interference with those Court's judicial discretion, and entirely unwarranted by any provision of the Act.[42]

446. INVESTIGATION BY COURT.—If an investigation is undertaken by the judge himself, it is entirely wrong to suppose that the plaintiff has first to give evidence to satisfy the Court of the propriety of his valuation before he is entitled to get his plaint or memorandum registered. The proper course in these cases is to deal with the matter when the plaint or memorandum has been filed.[43] If the Court is of opinion that the value has been wrongly assessed the Court can proceed under S. 9, and assess the value by proceeding strictly according to law, in the manner provided in that section, and not in an arbitrary and illegal way.[44] It is not in the power of the Court to call upon the plaintiff, or the appellant to produce evidence to substantiate the value which he has assessed upon the property in question, and on his failure to prove that the Court-fee is what he the party alleges it to be, to dismiss THE SUIT OR APPEAL FOR NON-PROSECUTION.[45] If the defendant desires to question the value of the property at the time of bringing the suit, it is his business either to adduce evidence as to what that value is, or to move the Court to cause a local enquiry to be held.[46] "Ss. 9 and 10 of Act VII of 1870 govern all cases in which a Court may think it necessary to hold an inquiry into the market-value of, or the annual nett profits arising out of the property, the subject-matter of the claim, and whether that inquiry be by evidence taken on an issue raised by the defendant or by a local investigation held in person or by commission, or otherwise."[47] No doubt, the primary object of the Legislature in framing these provisions was to protect the stamp revenues of the state, but, of course, it was not to be allowed that parties should allege an unreasonably high value of the property in dispute for the purpose of harassing their opponents, and therefore it was made competent to the Court, on the application of either party

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(42) *Badarannessa Chandhrani* v. *Ram Chandra Mala Das*, 1929 Cal. 717=49 C.L.J. 562=33 C.W.N. 845. *Cf. Jalekha Bibi* v. *Danis Mahommed*, 1930 Cal. 65=33 C.W.N. 952=50 C.L.J. 164. (Charts may be used to assist Court in starting enquiry, but should not be used are judicial investigation).

(43) *Jalekha Bibi* v. *Danis Mahommed*, 1930 Cal. 65 (68).

(44) *Badarannessa Chandhrani* v. *Ram Chandra Maladas*, 1929 Cal. 717=49 C.L.J. 562=33 C.W.N. 845.

(45) *Ibid.* 1929 Cal. 717, *supra.*

(46) *Ooma Sunker* v. *Munsoor Ali*, 13 W.R. 326.

(47) *Hari Ram* v. *Akbar Hussain*, 29 All. 749 (757) (F.B.).

to issue a commission, and make an enquiry into the market-value, or the nett profits of the property in dispute. [48] The final decision, as to valuation of suit, after an enquiry into the market-value of the property in suit is vested in the Court which hears the suit.[49] But, where no such enquiry is made, it must be assumed that the plaintiff's valuation is *prima facie* correct until rebutted by evidence.[50] If the result of the Court's investigation is to the effect that the plaintiff's valuation is insufficient, then the plaintiff may be called upon to make the necessary deposit, and S. 10, shows that the suit is at first to be stayed, and if necessary later on dismissed.[1]

447. POWER OF COURT TO TAKE EVIDENCE.—The Court has power to revise plaintiff's estimate of market-value, or nett profits, in suits specified in S. 7, Cls. V and VI of the Court-Fees Act:[2] and a local investigation is discretionary. The object of the law may be inartistically expressed, but the intention evidently was to empower Courts to hold inquiry, and it was intended that they should do so preferentially themselves.[3] whenever the Courts saw reason to think that the annual profits or the market-value of any such land, etc., as is mentioned in S. 7, (v) and (vi), of the Act have, or has been wrongly estimated.[4] Such investigations to be held under S. 9, may be by commission, and the Commissioner's report will be treated as part of evidence in the suit, and the Court will take further evidence if necessary.[5] The Court is not restricted to an Ameen's report in the matter, but the law allows the Court the benefit of an Amen's investigation.[6] The sections of the Civil Procedure Code which relate to local investigation do not contemplate the tender of further evidence after an Ameen's report, except the examination of the Ameen himself, but they do not forbid it.[7] However, it is not necessary to take further evidence whenever one of the parties chooses.[8] The decision of a Court as to the market-value of immoveable property passed after objection made is final even though no inquiry was made under a commission, the Court not being bound to issue any commission.[9] Accordingly, it was held that where by such a

(48) *Mt. Soobudra* v. *Ram Prokash Singh*, 16 W.R. 5.

(49) *Ooma Sunker* v. *Munsoor Ali*, 13 W.R. 326.

(50) *Mt. Soobudra* v. *Ram Prokash Singh*, 16 W.R. 5.

(1) *Jalekha Bibi* v. *Danis Mahommed*, 1930 Cal. 65 (68), also see *Hari Pada* v. *Divi Jendra*, 5 C.L.J. 28, notes.

(2) *Mt. Soobudra* v. *Ram Prokash Singh*, 16 W.R. 5, also see *Chinamal* v. *Madarsa Rowther*, 27 Mad. 480=14 M.L.J. 343.

(3) *Hari Ram* v. *Akbar Hussain*, 29 All. 749 (755, 756) (F.B.)

(4) *Ibid.* 29 All. 749 (757) (F.B.).

(5) *Axim Sarung* v. *Almooddeen*, 17 W.R. 270, also see *Girish Chander* v. *Shoshi*, 27 Cal. 951 (955), (P.C.).

(6) *Modhoosoodan* v. *Rayemoneedasi*, 13 W.R. 415.

(7) *Girish Chander* v. *Shoshi Shikhareswar Roy*, 27 Cal. 951 (966) (P.C.)

(8) *Ibid.* 27 Cal. 951 (966) (P.C.).

(9) *Eshan Chander Mookerjee* v. *Lokenath Roy*, 14 W.R. 451=6 B. L.R. (A.C.) 72, also see *Hari Ram* v. *Akbar Hussain*, 29 All. 749 (F.B.).

decision a munsiff finds that the value of a suit to be within his jurisdiction, a Subordinate Judge is not competent to rule on that point the munsiff has no jurisdiction.[10]

448. SUIT, WHETHER INCLUDES APPEALS.—It has been held by the ALLAHABAD HIGH COURT, that Ss. 9, 10 and 11 of the Court-Fees Act relate to suits, and do not relate to appeals.[11] But, the PUNJAB CHIEF COURT has held in *Dayal Singh* v. *Ram Rakha*, that "suit" includes appeals, and it would be competent to the first appellate Court, as also, to the Court of second appeal, or further appeal, to call upon a party, whose fee was in defect in the subordinate Court, to make good such deficiency, within a reasonable time to be fixed by the Court in accordance with S. 10 (ii) of the Court-Fees Act, on penalty of having any decision in his favour in the lower Court set aside.[12] The CALCUTTA HIGH COURT has observed in *Badrunnessa Chandhrai* v. *Ramchandra*,[13] that this section applies to the Court of first instance primarily, but there is no reason to think why it should not apply also to a Court of appeal. This power of Court to determine proper stamp duty, on appeal, has been held to exist in the Madras case of *ex parte Moone Rangappen*;[14] and, in an early Allahabad case of *Dhunnoo* v. *Damodar*.[15]

Procedure where nett profits or market-value wrongly estimated.

10. (i) If in the result of any such investigation the Court finds that the nett profits or market-value have or has been wrongly estimated, the Court, if the estimation has been excessive, may, in its discretion, refund the excess paid as such fee; but, if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market-value or nett profits been rightly estimated.

(ii) In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

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(10) *Eshan Chandri Mookerjee* v. *Lokenath Roy*, 14 W.R. 451, ***supra.***

(11) *Balkaran Rai* v. *Gobinda*, 12 All. 129=10 A.W.N. 39 (F.B.). also see *Hari Ram* v. *Akbar Hussain*, 29 All. 749=4 A.L.J. 636=27 A. W.N. 253 (F.B.).

(12) *Dayal Singh* v. *Ram Rakha*, 109 P.R. 1912=15 I.C. 463 (F.B.). *Cf. Narain Singh* v. *Chaturbhuj Singh*, 20 All. 362. (Appellant not in fault in lower appellate Court).

(13) 1929 Cal. 717 (719)=49 C.L.J. 562=33 C.W.N. 845.

(14) 3 Mad. H. C. 352.

(15) 2 N.W.P. 177.

Synopsis.

1. Legislative changes.
2. History of Ss. 9 and 10, Court-Fees Act.
3. Provision in Civil Procedure Code, and Court-Fees Act, compared.
4. Dismissal of suit by Court having jurisdiction.
5. Procedure in case of deficiency
6. Payment antedates to institution.

449. LEGISLATIVE CHANGES.—This section when first enacted had three clauses. Cl. (iii) of the section, which enacted that S. 180, of the Civil Procedure Code, 1859, (corresponding to O. 26, R. 9, Civil Procedure Code, 1908), should be read as part of S. 10, Court-Fees Act, has been repealed by the Repealing and Amending Act, XII of 1891. By Assam Act, III of 1932, a provision is made locally, for payment to Government of the expenses of a commission to value profits.

450. HISTORY OF SS. 9 AND 10, COURT-FEES ACT.—The history of Ss. 9 and 10, of Act VII of 1870, has been thus traced by Knox, A.C.J., in *Hari Ram* v. *Akbar Hussain*,[16]

"At the time when Act VII of 1870 was placed upon the statute Book the Act which regulated the procedure of Civil Courts was Act No. VIII of 1859. That Act contained a section (S. 180) which empowered Courts under certain special circumstances to issue a commission for certain purposes to an officer of the Court, directing him to make an investigation and to report to the Court. The ascertaining of either the market-value of property or the nett annual profits of an estate was not one of those purposes. When Act No. VII of 1870, first became law, S. 9 stood as it stands now. But Section 10 at that time consisted of three clauses and the third clause ran as follows:—''Section 180 of the Code of Civil Procedure shall be construed as if the words 'the market-value of any property or' were inserted after the word 'ascertaining', and as if the words 'or annual nett profits' were inserted after the word 'damages'.'' The object and meaning of this clause is evident. It was that S. 180, Act VIII of 1859, should be read as part of S. 10, Act VII of 1870. It empowered Courts in any suit in which the Court might deem a local investigation to be requisite or proper for the purpose of ascertaining the market-value of any property or the amount of annual nett profits to issue a commission to a proper officer for the purpose of conducting the necessary investigation and to consider the report of the Commissioner. Upon the repeal of Act VIII of 1859, the Codes of Civil Procedure which followed in 1877, and in 1882, contained sections which re-enacted the provisions of S. 180, Act VIII of 1859, as amplified by Act VII of 1870, S. 10, Cl. (iii). They contained also an important addition to the effect (*vide* S. 392 of Act XIV of 1882) that such commission was only to issue when the investigation deemed necessary by the Court could not be conveniently conducted by the Judge in person.

''The use of the word 'may' in S. 10 must not be overlooked. When the section is read with the incorporated S. 392 of the Code of Civil Procedure, the obvious inference is that the power of delegation was not to be exercised as a matter of course or on the mere requisition of a party to the suit. On the contrary, the language used shows that the section was framed so as to discourage as much as possible local investigation by a Commissioner.

''From 1870 onwards Cl. (iii) of S. 10 of Act VII of 1870 stood side by side with the amplified S. 392 of the Code of Civil Procedure, until in 1891 the Legislature, on going through the statute Book with the object of removing certain statutes and portions of statutes which were spent or had become unnecessary expunged Cl. (iii) of S. 10 as no longer necessary (Act XII of 1891, Sch. I.)."

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(16) 29 All. 749 (755, 756) F.B.

451. PROVISION IN CIVIL PROCEDURE CODE, AND COURT-FEES ACT COMPARED—(1) NO BAR TO FRESH SUIT.—It has been pointed out by Sir John Edge, C.J., in the Full Bench Case of *Balkaram Rai* v. *Gobind Nath Tiwari*,[17] that Ss. 9, 10, and 11, of the Court-Fees Act are not in conflict with S. 28, of that Act; and, that Ss. 9, 10, 11 and 28, of the Court-Fees Act, are not in conflict with S. 54, of the Civil Procedure Code, 1882 (now O. 7, R. 11, Civil Procedure Code, 1908).[18] S. 8 empowers the Court to issue a commission for the purposes therein mentioned;[19] and S. 10, enacts that if the Court finds on inquiry that a sufficient Court-fee has not been paid, it is bound to stay the suit and to fix the time within which the additional fee can be paid. If the fee is paid within the time so fixed, whether that be a time within or beyond the period of limitation prescribed for the suit, the plaint is as valid as if it had been properly stamped in the first instance on the day when the suit was instituted.[20] If the fee is not so paid, the suit *shall be dismissed*.[21] But this dismissal of suit, not being a decision of the suit passed on its merits, after the case has been *heard*, cannot operate as a plea barring a fresh action *in limine* as *res judicata*,[22] and would not preclude a plaintiff from presenting a fresh plaint in respect of the same cause of action, provided it was within the period of limitation prescribed for such suit; and this is all that is provided by the Civil Procedure Code in the case of rejection of the plaint.[23] S. 54, of the Civil Procedure Code, 1882 (now O. 7, R. 11, Civil Procedure Code, 1908), deals with the *rejection of plaints*, and where a suit is disposed of under this rule, the Court ought not to *dismiss the suit*.[24] The effect of a rejection of a plaint, is that the plaintiff would not under O. 7, R. 13, be precluded from filing a fresh plaint in respect of the same cause of action, if he so desires.[25]

(2) APPLY TO ANY STAGE OF SUIT.—The Madras High Court, held in *Valiya Kesava Vadhyar* v. *Suppan Nair*[26] that S. 54, of the Act of 1877, which directed that a plaint *shall be rejected* in certain cases, applies only to the initial stages of a suit before a plaint has been registered, whereas the application of S. 10, of the Court-Fees Act, which directs that a suit *shall be dismissed*

(17) *Ibid.* 29 All. 749 (755, 756) F.B.

(18) 12 All. 129 (F.B.).

(19) *Ibid.* 12 All. 129 (F.B.).

(20) *Hari Ram* v. *Akbar Hussain*, 29 All. 749 F.B.

(21) *Valli Isc Amanji* v. *Mahamad Adam Asmal*, 26 I.C. 746, also see *Brijkrishna Das* v. *Murli Rai*, 56 I.C. 316=4 Pat.L.J. 703.

(22) *Muhammad Salim* v. *Nabian Bibi*, 8 All. 282 (287), also see *Balkaran Rai* v. *Gobind Noth Tiwari*, 12 All. 129 (149) F.B. and, *Irawa Lakshmana* v. *Satyappa*, 7 I.C. 967=35 Bom. 38=12 Bom.L.R. 766.

(23) *Balkaran Rai* v. *Gobind Nath Tiwari*, 12 All. 129 (149) F.B.

(24) *Ganga Narain* v. *Tiluck Ram*, 15 Cal. 533, P.C.=15 I.A. 119=12 Ind. Jur. 254; *Radhakanta* v. *Debenedra Narain*, 70 I.C. 101=1922 Cal. 506 (508)=49 Cal. 880, also see, *Valli Ise Amanji* v. *Mahamad Adam Asmal*, 26 I.C. 746=16 Bom.L.R. 763.

(25) Chitale Civil Procedure Code, p. 1503 (O. 7, R. 11, Note 2).

(26) 2 Mad. 308=Ind.Jur. 286, also see *Babu Lal* v. *Asi Kunwar*, 27 All. 197=1 A.L.J. 641 (644)=(1904) A.W.N. 224.

in a certain case, is not susceptible of restriction to any particular stage. But this view was not followed in *Kishore Singh* v. *Sahdal Singh*[27] by the ALLAHABAD HIGH COURT, where it was held that S. 54, Civil Procedure Code, 1882, (now O. 7, R. 11, Civil Procedure Code, 1908), may be applied at any stage of a suit. A similar view is taken by the CALCUTTA HIGH COURT in a number of cases.[28] Likewise, the MADRAS HIGH COURT,[29] and the PUNJAB CHIEF COURT[30] have held that the provisions of the Civil Procedure Code, are mandatory and imperative, and can be enforced after the plaint is registered, and at any stage of a suit where the defective Court-fee is discovered. But, the original suit cannot be dismissed under Ss. 10 and 12, of the Court-Fees Act, before the appeal is admitted.[31]

(3) APPEAL AS A DECREE—FORUM OF APPEAL.—An order rejecting a plaint is a decree and appealable as such.[32] Where a plaint is rejected under Cl. (b), for under-valuation of the relief claimed, the order rejecting the plaint is not appealable, unless the order necessarily involves a decision of the category or class under which a suit falls. An order dismissing a suit is a decree, and where a suit has been dismissed in consequence of the failure of the plaintiff to pay the institution fees on the valuation fixed by the Court of first instance, it is open on appeal to the person affected by that order to question the correctness of that order with a view to succeed in the appeal by getting the decree set aside, and the suit heard.[33] An appeal lies against an order of dismissal as a decree, and the correctness of the order dismissing the suit can be raised in support of the appeal, and thus the valuation of the suit as arrived at by the trial Court is open to contest. It is, however, final until reversed on appeal against the order of dismissal of suit.[34] Where the suit is undervalued, and the deficiency is made good as ordered by the Court, the value of the suit would be the value after the deficiency has been made

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(27) 12 All. 553=9 A.W.N. (1889), 185.

(28) *Padma Nand Singh* v. *Anant Lal Misser*, 34 Cal. 20 (F.B.), and *Brahmomoyi Dasi* v. *Andi Gi*, 27 Cal. 376; *Radhakanta* v. *Debendra Narain*, 70 I.C. 101; *Hiralal Banarji* v. *Surendra Nath*, 91 I.C. 488=1926 Cal. 504. (Dismissal of suit not proper).

(29) *Venkatesa Tawker* v. *Ramasami Chettiar*, 18 Mad. 338 (Rejection of plaint already registered).

(30) *Sri Kishandas* v. *Pir Baksh*, 126 P.R. 1888, also see 3 P.R. 1893, and *Nanakchand* v. *Jowanmal*, 35 P.R. 1914=25 I.C. 435.

(31) *Govunda* v. *Parameswara*, 1 M.L.J. 528.

(32) *Sadakaur* v. *Buta Singh*, 80 P.R. 1914=25 I.C. 565, also, *Chandramani* v. *Basdeo*, 49 I.C. 442=4 Pat.L.J. 57 (70), *Dada* v. *Nagesh*, 22 Bom. 486; *Studd* v. *Mati*, 28 Cal. 334; *Kandran* v. *Komappan*, 14 Mad. 169.

(33) *Prokash Chunder* v. *Bishumbar Nath*, 5 I.C. 18=14 C.W.N. 343, also see and Compare. *Amarta Lal Kumar* v. *Sisir Kumar Basu*, 1926 Cal. 427, and *Jalekha Bibi* v. *Danis Mahammed*, 1930 Cal. 65=50 C.L.J. 164=33 C.W.N. 952. (Duty of appellate Court on appeal against an order rejecting plaint).

(34) *Prokaskchander Sarkar* v. *Bishumbar Nath Salu*, 5 I.C. 18=14 C.W.N. 343, citing *Owrao Mirza* v. *Mary Jones*, 12 C.L.R. 148; and, *H. C. Studd* v. *Mati Mahto*, 28 Cal. 334.

good, and not the value which the plaintiff had originally placed thereon. But, so long as there has been no order accepted by the plaintiff to make good the deficiency, the original value placed by the plaintiff must be taken as the value of the suit for the purpose of regulating the proper appellate Court.[35] "When there has been such an order accepted by the plaintiff from that moment the value of the suit must be taken as being in accordance with the fee paid by the plaintiff."[36] This view was accepted by a Full Bench of the Calcutta High Court in *Ijjat-ulla* v. *Chandra Mohan*.[37]

(4) CHARTERED HIGH COURTS.—The provision in O. 7, R. 11, Civil Procedure Code, 1908, (Cls. (b) and (c), does not apply to chartered High Courts in the exercise of their ordinary, or extraordinary Original Civil Jurisdiction (see O. 49, R. 3, Civil Procedure Code).[38] The Allahabad High Court has held the rule to be inapplicable to their *appellate jurisdiction*.[39]

452. DISMISSAL OF SUIT, BY COURT HAVING JURISDICTION.—The only Court which can pass the order dismissing the suit under S. 10 of the Court-Fees Act is the Court having jurisdiction.[40] And when at any stage of the suit it is found that the Court-fees are insufficient, and that the value of the property has been underestimated, the Court has power to make an enquiry as to the value of the property, and if the Court has jurisdiction to decide the case, the Court can dismiss the suit if the additional Court-fee is not paid within such time as the Court shall fix. Where, however, the market-value of the property goes beyond the pecuniary jurisdiction of the Court which has made such an inquiry, then it is the imperative duty of the Court, under O. 7, R. 10, Civil Procedure Code, to return the plaint for presentation to the proper Court.[41] The MADRAS HIGH COURT has taken the same view in two recent cases. The preliminary point to consider is to see, whether having regard to the proper valuation either mentioned in the plaint or arrived at by it, the Court has got jurisdiction to entertain the plaint. When a Court finds that on the correct valuation, the plaint is not cognisable by it, the Court should return the plaint at once for presentation to proper Court, which will deal with question of deficiency of Court-fee, and take necessary procedure under the law; and it should not refuse to return the plaint until plaintiff had paid the proper Court-fee.[42] "If the plaint was returned for

(35) *Sri Raman Lalji* v. *Desraj*, 5 I.C. 875=32 All. 222=7 A.L.J. 203.

(36) *Ibid.* 32 All. 222=5 I.C. 875, citing 34 Cal. 954 (F.B.).

(37) 34 Cal. 954 F.B.=6 C.L.J. 255=11 C.W.N. 1133 (F.B.)

(38) Chitale's Civil Procedure Code.

(39) *Balkaran Rai* v. *Gobindnath Tiwari*, 12 All. 129 F.B.

(40) *Ganesh Tavanappa Burde* v. *Tatya Bharmappa Mirji*, 101 I.C. 343 =29 Bom.L.R. 280=51 Bom. 236=1927 Bom. 257.

(41) 101 I.C. 343=51 Bom. 236=1927 Bom. 257.

(42) *Ramanna* v. *Amireddi*, 1931 Mad. 67=129 I.C. 826=61 M.L.J. 43=34 L.W. 352; and, *Bethasami Naicken* v. *Nagammal*, 1931 Mad. 69= 1930 M.W.N. 656=59 M.L.J. 899=33 M.L.W. 68=129 I.C. 625.

presentation to the proper Court, the plaintiff could take advantage of the Court-fees that had been paid on the previously filed plaint and he could pay the deficient Court-fees in the Court having jurisdiction to hear the case''.[43] The MADRAS HIGH COURT, held in the Full Bench Case of *Visweswara Sarma* v. *Dr. T. M. Nair*, that where Court-fee is paid upon the institution of a suit in a Court which cannot grant the relief sought, and consequently, the plaint is returned for presentation to the proper Court, the plaintiff, on filing the plaint in the latter Court, is entitled to take credit for the amount of the Court-fee levied in the Court to which it was first presented, even though the stamp was cancelled before the plaint was returned.[44] Where a plaint is returned by a Court for want of jurisdiction, and the same is presented to the Court having jurisdiction, the suit is to be stayed until the deficiency in Court-fee is made good.[45] And, if the deficient amount is paid within time, the suit must be registered.[46]

453. Extension of time.—It is competent to a Court, after the expiry of the time initially granted, to enlarge the time for payment of the deficit Court-fee on a plaint.[47] Also see S. 148, Civil Procedure Code.

454. PROCEDURE IN CASE OF DEFICIENCY.—The provisions in S. 10 (ii), are mandatory, and the power conferred by this provision of law may be exercised at any time so long as the suit remains before the Court.[48] But, it is desirable that where the appellate Court has to deal with the question of deficit Court-fees, it must be done at the earliest possible moment.[49] Where a plaint as well as the memorandum of appeal filed by the plaintiff are found to be insufficiently stamped, the proper course to be followed by the appellate Court is to direct that the appeal be registered on the appellant supplying the deficit Court-fees as regards his memorandum of appeal, and after the appeal has been registered, and before it has been dealt with under O. 41, R. 11, Civil Procedure Code to place the case for orders under S. 12 (2),

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(43) 1931 Mad. 67=129 I.C. 826=61 M.L.J. 43=34 M.L.W. 352, also see *Kannusami Pillai* v. *Jagthambal*, 8 L.W. 145=46 I.C. 265=(1918) M.W.N. 497=24 M.L.T. 46=41 Mad. 701. (Court has no jurisdiction, on discovering that the subject-matter of a suit is beyond its jurisdiction, to allow wtth drawal of suit, under O. 23, R. 1, but it should follow the provisions of O. 7, R. 10, Civil Procedure Code, and return the plaint for presentation to proper Court).

(44) 10 I.C. 201=21 M.L.J. 533=10 M.L.T. 29.

(45) *Tajammal Hussain* v. *Nawabdad Khan*, 3 I.C. 830 (F.B.), followed, *Hari Ram* v. *Akbar*, 29 All. 749 F.B.

(46) *Ibid.*

(47) *Dwarka Nath Biswas* v. *Kedar Nath Biswas*, 2 I.C. 1, (follows *Badri Narain* v. *Sheo Koer*, 17 Cal. 512=17 I.A. 1, P.C., also see *Raj Kishori Koer* v. *Madan Mohan Singh*, 31 Cal. 75, *Chunni Lal* v. *Ajudhia Pershad*, 19 All. 240; and, *Bhagwandas* v. *Haji Abu Ahmed*, 16 Bom. 263.

(48) *Bidhu Bhusan Baksh* v. *Kola Chand Roy*, 106 I.C. 335=1927 Cal. 775=31 C.W.N. 1045.

(49) *Hitendra Singh* v. *Rameshwar Singh*, 62 I.C. 43=6 Pat. L.J. 293, (F.B.)=2 P.L.T. 383.

of the Court-Fees Act as regards the deficit Court-fees on the plaint in the lower Court.[50] The PATNA HIGH COURT, has similarly held in *Brij Krishna Das* v. *Murli Rai*,[1] that upon the plaintiff-respondent's failure to pay the deficit Court-fee, it is competent to the appeal Court to call upon him to pay the deficit and in the event of his failure to pay, to enforce the order by the dismissal of the suit. The Court may, however, in exercise of its inherent powers, hold the decree which had been obtained by the defaulting party in abeyance, and to direct that it shall not be executed until such time as the order in respect of the deficit is complied with. But if this remedy is not adopted, the law enjoins a dismissal without option. Where it was discovered in second appeal that the appeal memo was not properly stamped in the lower appellate Court, the High Court ought to stay its own decree till the deficiency is made up.[2] The trial Court's finding on the question of valuation of suit, if found to be wrong by the appellate Court, the plaintiff should have the option of supplying the necessary stamps, as the first Court would have done.[3]

455. Parties to suit.—A question of Court-fees is not really a question between the parties to the suit at all. It is a question between the Court, and the plaintiff; consequently, it is not a substantial question of law for the purposes of leave to appeal to Privy Council.[4]

456. Abandonment of claim.—Where the plaintiff is ordered to pay a deficient Court-fee within the time prescribed by Court, and instead of doing so he reduces the claim, and returns the plaint with a Court-fee which is then correct, there is no disobedience of the order of the Court, and the original plaint will have the same effect as if the proper Court-fee had been paid at the outset.[5] A plaintiff may relinquish any portion of his claim to bring it within the Court's jurisdiction (O. 2, R. 2, Civil Procedure Code), and it seems equally open to him to relinquish a portion in order to bring it within a certain Curt-fee.[6] There is no evasion of the proper Court-fee, where the plaintiff does not get a relief on payment of an inadequate Court-fee, rather he sets his plaint and fee right within the time prescribed by Court.[7] Accordingly, it has been held that where a plaintiff instead of paying the additional Court-fee strikes out a portion of his claim,

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(50) *Bidhu Bhushan Bakshi* v. *Lala Chand Roy*, 106 I.C. 335=31 C.W.N. 1045=1927 Cal. 775.

(1) 56 I.C. 316=4 Pat.L.J. 703.

(2) *Mohanalal* v. *Nanda Kishore*, 28 All. 270.

(3) *Wahed Ali Khan* v. *Hunnooman Pershad*, 12 W.R. 484.

(4) *Godha Mal* v. *Prem Singh*, 110 I.C. 179=1928 Lah. 560.

(5) *Neelachalam* v. *Narasinga Das*, 1931 Mad. 716=34 M.L.W. 252 =1931 M.W.N. 677=134 I.C. 816. *Cf. Midnapore Zamindary Coy.* v. *Secretary of State*, 44 Cal. 352=40 I.C. 96. (Where plaintiff entirely failed to comply with Court's order, and then afterwards sought to remedy matters by striking out a plea).

(6) 1931 Mad. 716=134 I.C. 816, *supra*.

(7) 1931 Mad. 716=134 I.C. 816, *supra*.

the suit cannot be dismissed under S. 10 (v), Court-Fees Act.[8] However, a plaintiff who has not properly valued his claim or paid a sufficient Court-fee is not entitled at the last moment to an option to abandon part of his claim and retain only that part for which he has paid a sufficient Court-fee.[9] Similarly, it has been doubted if an appellate Court has power to allow a valuation of plaintiff's claim in the Court below to be reduced in order to relieve the party from liability to pay Court-fees.[10] The principle of the Allahabad ruling was applied to the case of an appellant in *Dunichand* v. *Aziz Khan*,[11] where it was held by the PUNJAB CHIEF COURT that where a defendant appeals from a decree passed against him, and at the very outset of the proceedings asks to be allowed to amend his memorandum of appeal by striking out part of his claim, the respondents are in no way prejudiced thereby, nor would an order allowing such amendment be detrimental to the revenue. The case of *Arogya Udayan* v. *Appachi Rowthan*,[12] was distinguished on the ground that this prayer was made for no ulterior purpose or with the intention of affecting the jurisdiction of the Court. An analogous case is the view of the LAHORE HIGH COURT that where an appeal in a money suit is not properly stamped, it cannot be dismissed *in toto*, but it will not admit the passing of a decree in excess of the sum for which the Court-fees has been paid.[13] This principle was acted upon in a pre-emption case, where it was held that when the lower appellate Court refuses indulgence under S. 149, in the case of appeal which is insufficiently stamped, the appellant is entitled to have his appeal heard with regard to his claim for which Court-fee has been paid, and in so far as it is within time, irrespective of whether or not such request is made to the Court by the appellant.[14]

457. PAYMENT ANTEDATES TO INSTITUTION.—The date of the institution of a suit should be reckoned from the date of the presentation of the plaint, even through insufficiently stamped, where the requisite Court-fees is subsequently put in, so as to make it admissible as a plaint. This was so held by their Lordships of the Privy Council in *Skinner* v. *Orde*,[15] and this view was followed by the Calcutta High Court in *Moti Saha* v. *Chhatri Das*,[16] and in *Hari Mohan* v. *Naimuddin*,[17] *differing* from the view of the Allahabad Full Bench in the case of *Balkaran Rai* v. *Gobind*

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(8) 27 All. 151=1 A.L.J. 577. Cited in 1931 Mad. 716.

(9) *Valli Ise Amanji* v. *Mahmad Adam Asmal*, 26 I.C. 746.

(10) *Narain Prasad* v. *Kameshwar Pershad*, 43 I.C. 489=3 Pat.L.J. 101.

(11) 10 I.C. 207=131 P.L.R. 1911.

(12) 25 Mad. 543.

(13) *Nihalchand-Atmaram* v. *Sardari Mal*, 96 I.C. 135=1926 Lah. 558.

(14) *Shah Mohammad* v. *Syed Shah Mohamad*, 1931 Lah. 237=131 I.C. 297=32 P.L.R. 129.

(15) 2 All. 241=6 I.A. 126.

(16) 19 Cal. 780.

(17) 20 Cal. 41.

Nath Tiwari.[18] In the Allahabad the suit was dismissed as barred by limitation, on the grounds that, when the plaint was presented, it was not in a condition in which it could have been received, filed, or used as a plaint in the case; that the order endorsed on the plaint was not an order in accordance with the provisions of S. 28, of the Court-Fees Act of 1870, and therefore the payment of the proper Court-fee later could not have the retrospective effect of giving validity to the plaint when first presented. In a later Full Bench case of *Hari Ram* v. *Akbar Hussain*,[19] the principle of the decision in *Balkaran Rai* v. *Gobind Nath Tiwari*,[20] so far as applicable to plaints was rejected; and, it was held, that Ss. 9 and 10, of Court-Fees Act govern all cases in which a Court may think it necessary to hold an inquiry into the market-value of or the annual profits arising out of the property, the subject-matter of the claim; and when the Court holds an inquiry either *per se*, or through a Commissioner appointed for the purpose, and finds that a sufficient Court-fee has not been paid, it is bound to stay the suit and to fix a time with which the additional fee can be paid, without any regard to the fact whether that be a time within or beyond the period of limitation prescribed for the suit. *If the fee is paid within the time so fixed, the plaint is as valid as if it had been properly stamped in the first instance on the day when the suit was instituted*,[21] The CALCUTTA HIGH COURT, held in *Surendra Kumar* v. *Kunj Behari*,[22] that where a plaint was presented in the proper Court with insufficient stamp, and the Court, without rejecting the plaint, allowed a certain time to put in the deficit Court-fee which was done within the time allowed, for the purposes of limitation the suit should be considered to have been instituted on the date when the plaint was first presented. The BOMBAY HIGH COURT, similarly took the view that for the purpose of limitation, a suit is instituted when the plaint was presented, and not on the day on which the deficient stamp duty was paid.[23] Likewise, the MADRAS HIGH COURT, has held, in *Gavaraiya Sahu* v. *Botokrishna*,[24] that when a plaint is presented, on a paper insufficiently stamped, within the prescribed period of limitation, and a time is given by the Court under Civil Procedure Code to make good the deficiency, and the deficiency is supplied within the time fixed by the Court, but after the period of limitation expired, the suit is not barred by limitation: and, a Full Bench of the Madras High Court, held the same, following the Calcutta, Bombay and Allahabad view:[25] and now this view has received statutory recognition in S. 149, of the Civil Procedure Code, 1908.[26]

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(18) 12 All. 129 (F.B.).
(19) 29 All. 749 (F.B.).
(20) 12 All. 129 (F.B.).
(21) 29 All. 749 (765).
(22) 27 Cal. 814=4 C.W.N. 818 (follows 19 Cal. 780 and 20 Cal. 41).
(23) 27 Bom. 330.
(24) 32 Mad. 305.
(25) 1 I.C. 507 (F.B.).
(26) S. 149, Civil Procedure Code, 1908:—"Where the whole or any part of any fee prescribed for any document by the law for the time being

11. In suits for mesne profits, or for immoveable property and mesne profits, or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer.

Procedure in suits for mesne profits or account when amount decreed exceeds amount claimed.

Where the amount of mesne profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, ths suit shall be dismissed.

Synopsis.

1. Amendment.
2. Scope of the section.
3. Application of the section.
4. Construction of the section.
5. Court-fee in suits for past mesne profits.
6. Inquiry as to mesne profits.
7. Decree for future mesne profits.
8. The Madras Amendment.
9. Decree for possession and mesne profits.
10. Penalty for non-payment of additional Court-fee.
11. Decree beyond limit of pecuniary jurisdiction.
12. Valuation of suit for purposes of jurisdiction.
13. Valuation of suit in appeal—Forum of appeal.

458. AMENDMENT.—By Madras Act V of 1922, the following two paragraphs have been substituted in the place of para. 2 of the section, providing for the realisation of Court-fee on past and future mesne profits exceeding the claim in suit.

Where a decree directs an inquiry as to mesne profits which have accrued on the property during a period prior to the institution of the suit, if the profits ascertained on such inquiry exceed the profits claimed, no final decree shall be passed till the difference between the fee actually paid, and the fee which would have been payable had the suit comprised the whole of the profits so ascertained, is paid. If the additional fee is not paid within such time as the Court shall fix, the claim for the excess shall be dismissed, unless the Court, for sufficient cause, extends the time for payment.

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in force relating to Court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such Court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance."

Where a decree directs an enquiry as to mesne profits from the institution of the suit, and a final decree is passed in accordance with the result of such inquiry, the decree shall not be executed until such fee is paid as would have been payable on the amount claimed in execution if a separate suit had been instituted therefor.''

459. **SCOPE OF THE SECTION.**—This section regulates the levy of proper Court-fees in a special class of suits, where from the very nature of the case, only an approximate or unascertained amount due can be claimed at the institution of suits, by providing for the levy of Court-fee on the excess amount found due, under safeguard of penalties by stay of execution or dismissal of suit, under circumstances provided in paras. one and two of the section, respectively. It deals with suits covered by the provision in Civil Procedure Code, O. 7, R. 2, *viz.*, suits for mesne profits, or for an amount which will be found due to plaintiff on taking unsettled accounts between him, and the defendant. In such suits, it would be observed, the plaintiff is, generally, not in a position to give the amount precisely, as he is required to do in ordinary suits for the recovery of money. Consequently, the law allows him to state the amount claimed only *approximately*, subject to the ascertainment of the precise amount later in the course of the suit, or proceeding connected therewith. (See O. XX, R. 12, 16 and 17).

The Code of 1882 required that an inquiry into mesne profits should be made in execution;[27] but the Code of 1908 has now effected a change, by providing for all such inquiries to be made in the suit itself, after a preliminary decree, and to be followed by a final decree settling the amount due.[28] By reason of the special provisions of Civil Procedure Code, (O. 7, R. 2, read with O. XX, R. 12), a plaintiff may in a suit for recovery of possession of immoveable property also claim (*a*) mesne profits which have accrued on the property prior to the institution of the suit; or, (*b*) an inquiry as to such mesne profits from the institution of the suit until delivery of possession to the decree-holder, or relinquishment of possession by the judgment-debtor, with notice to the decree-holder, or the expiration of three years from the date of the decree whichever event first occurs.[29]

The scheme of the section is that the plaintiff pays Court-fees on the amount *estimated* by him, and when mesne profits are assessed by a proceeding in suit, if any further fee is payable it has to be paid: and it is only on payment of this additional fee, on the excess amount ascertained by suit, or proceeding, that a

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(27) *Kedarnath* v. *Anant Prasad*, 88 I.C. 482=1925 P.C. 117=4 Pat. 507 (P.C.).

(28) *Ram Golam Sahu* v. *Chintaman Singh*, 5 Pat. 361=7 P. L.T. 313=1926 Pat. 218=93 I.C. 939 (F.B.).

(29) *Harakhpan* v. *Jagdeo*, 4 Pat. 57=84 I.C. 272=1924 Pat. 781 (right to apply arises on the happening of any one of the three events specified in O. 20, R. 12 (*c*), sub-rule (1), and not on the date of the decree directing an inquiry.)

regular decree comes into existence.[30] An application for ascertainment of mesne profits, under O. XX, R. 12, Civil Procedure Code, 1908, is not, however, a proceeding in execution, but a proceeding in continuation of the original suit.[31] Thus, the Court-fee, on the excess amount whether decreed by the trial Court, or appellate Court, can be levied by the proper officer under the provisions of this section, which has been enacted to place certain facilities in the way of the plaintiff, or appellant, as the case may be, but at the same time to ensure the payment of proper Court-fee before the plaintiff, or appellant can take any advantage of the decree for excess amount found due to him.

460. Tentative Valuation of Suit.—It has been observed that "ordinarily a plaintiff cannot recover more than he claims in the plaint, but in a suit for accounts or mesne profits, S. 11 of the Court-Fees Act permits the plaintiff to make an estimate of what he considers to be due to him and to pay the Court-fee thereon, and allows the Court to pass a decree for more than the amount at which the plaintiff valued his relief, if the profits or the amount decreed are found to be in excess of the profits claimed or the amount at which the relief sought is valued, provided the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer. The plaintiff is not tied up to his estimate, unless there is something to indicate that he relinquishes anything that might be found due in excess of it."[32]

461. (1) APPLICATION OF THE SECTION—Cases to which the section is applicable.—This section applies to suits for accounts, pure and simple; and, also to a claim for accounts in a suit for some other relief, when the portion of the suit as regards relief by way of accounts will fall within this clause.[33] In such cases, the plaintiff should state *approximately*, the amount which he claims will be found due to him on taking unsettled accounts between the parties.[34] The approximation need not be very close, but it may be a rough and ready approximation, as the value given

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(30) *Collector of Etawah* v. *Brindaban*, 1931 All. 538=1931 A.L.J. 413, also see, *Durga Bharti* v. *Bhagwati Prasad*, 64 I.C. 101=24 O.C. 209=8 O.L.J. 477.

(31) *Rudra Pratab* v. *Sarda*, 47 All. 543=87 I.C. 322=1925 All. 588; *Shanker* v. *Ganga Ram*, 1928 Bom. 236=52 Bom. 360=109 I.C. 734; *Bhatu Ram* v. *Fogule Ram*, 92 I.C. 629=1926 Pat. 141=5 Pat. 223, *Timmaraju* v. *Narasimha*, 1928 Mad. 522=109 I.C. 528=54 M.L.J. 665.

(32) *Durga Bharthi* v. *Bhagwati Prasad*, 64 I.C. 101=24 O.C. 209=8 O.L.J. 477, *Compare*, *Nand Kumar Singh* v. *Bilas Ram Marwari*, 40 I.C. 579=1 P.L.W. 781, where Chapman, J., remarked that the value of the appeal could be ascertained, and the plaintiff may, if he thinks it desirable, amend the valuation in his plaint, and if he does so, he will be limited to the amount stated, also see and, *Cf*. *Budhamal* v. *Ralhia Ram*, 9 Lah. 23=1928 Lah. 157 (2)=110 I.C. 631.

(33) 6 Bom.L.R. 1102.

(34) *Khushalchand Mulchand* v. *Nagindas*, 12 Bom. 675 (677)=1888 P.J. 1.

by the plaintiff is purely tentative;[35] and Court can pass decree for larger amount, than the amount claimed and levy additional Court-fee.[36] An administration suit falls under this section, and if the amount decreed is in excess of the amount at which the relief was valued in an administration suit, the deficiency in Court-fee must be recovered as laid down in S. 11 of the Act.[37]

462. This section applies to suits for mesne profits, whether separate from, or coupled with, a suit for immoveable property; and, it is incumbent upon the plaintiff to value the mesne profits up till the date of suit for the purpose of the assessment of Court-fees.[38] There is some conflict of opinion upon the question whether S. 11 is applicable when future mesne profits are claimed for period subsequent to suit up to date of delivery of possession. The view taken by the BOMBAY HIGH COURT, in *Ramkrishna Bhikaji* v. *Bhimabai*,[39] is to the effect that where the plaint asks for future mesne profits, the claim is not one in respect of which a fee could be payable under S. 7, as the amount cannot be stated even approximately. This view has been followed in *Vithal Hari* v. *Gobind*,[40] where it was held that no additional stamp is required on interest *pendente lite*, as it stands on the same footing as future mesne profits. The view was also accepted by the Madras High Court, in the cases of *Maiden* v. *Janaki Ramayya*,[41] and *Saminatha* v. *Muthuswami*;[42] and it has been followed in the Calcutta cases of *Banwari* v. *Daya Shunker*,[43] and *Bhupendra Kumar* v. *Purnachandra*;[44] but, it was held in *Promoda Nath Roy* v. *Secretary of State*, that the prayer "for any other relief" in the plaint would cover mesne profits subsequently accruing, for which there is no cause of action at the time of the commencement of the suit, and which can be awarded by means of statutory provision framed with the obvious purpose of shortening litigation."[47] In a prayer for past mesne profits, it is open to the Court, under O. XX, R. 12, Civil Procedure Code, to award both past and future mesne profits. The possession of property decreed with mesne profits

(35) *Govandas Kasandas* v. *Dayabhai Savichand*, 9 Bom. 22 (24); *Bai Hiragadri* v. *Gulabdas*, 15 Bom.L.R. 1123=22 I.C. 71 (73), also see and *Cf. Gabri Lal* v. *Raja Babu*, 1929 Pat. 626. (The plaintiff has to value his suit for account, for the purpose of Court-fee and jurisdiction, not necessarily exactly, but in an approximately correct fashion).

(36) *Durga Bharthi* v. *Bhagwati Prasad*, 64 I.C. 101=24 O.C. 209=8 O.L.J. 477 (F.N. 32, *supra*).

(37) *San Paw* v. *Ma Yin*, 55 I.C. 258=12 Bur.Law Times, 207.

(38) *Promode Nath Roy* v. *Secretary of State*, 53 Cal. 992=99 I.C. 428=1927 Cal. 182=31 C.W.N. 112, also see *Nand Kumar Singh* v. *Bilas Ram Marwari*, 40 I.C. 579=1 P.L.W. 781. (*Held*, that where mesne profits are claimed before the suit, the claim is not one of which value cannot be ascertained on appeal).

(39) 15 Bom. 416.

(40) 17 Bom. 41.

(41) 21 Mad. 371.

(42) 20 Mad.L.J. 98=5 I.C. 880.

(43) 13 C.W.N. 815=1 I.C. 670.

(44) 15 C.W.N. 506=13 C.L.J. 132=8 I.C. 34=43 Cal. 650.

(45) 53 Cal. 992=99 I.C. 428=1927 Cal. 182=31 C.W.N. 112.

means mesne profits up to the time of possession being delivered.[45] But the Calcutta High Court has taken a view in *Dwarkanath Biswas* v. *Debendra Nath Tagore*,[47] that where a plaint asks for past as well as future mesne profits, and Court-fee is paid for past mesne profits only, S. 11 of the Court-Fees Act applies. It is this view in *Dwarkanath Biswas's* case that has found favour with the PATNA HIGH COURT, in the Full Bench Case of *Ram Golam Sahu* v. *Chintaman Singh*.[48] Mullick, J., observes that S. 11, Court-Fees Act, contemplates two cases in which provision is made for exacting an additional Court-fee after the profits have been ascertained. The first paragraph would appear to relate to a case where the profits claimed before institution of the suit had been ascertained in the trial Court, and provides for payment of a fee upon the excess amount found due, under penalty of having the execution stayed if the fee is not paid.[49] The second paragraph appears to apply to all cases of past or future mesne profits which have been ascertained in execution, and provides for payment of a Court-fee upon the excess of the profits so ascertained over and above the amount claimed and paid for in the plaint, and the fee payable is the difference between the fee actually paid, and the fee which would have been payable had the suit comprised the whole of the profits actually ascertained. In such case the Court may fix a time within which the additional fee should be paid and may dismiss the suit for default of payment.[50] The fee payable under paragraph 2, is not the fee upon an estimated amount stated in the petition, but upon excess of the amount actually found due by the enquiry over and above the amount upon which the fee has already been paid.[1] Accordingly, it has been held that S. 11 applies to the claim for future mesne profits also, though no excess fee can be claimed until the actual amount due has been ascertained.[2] The RANGOON HIGH COURT has followed the Patna Full Bench View, and it has been held in *Daw Soe* v. *Koku*, that Court-fee is payable on a claim for mesne

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(46) *Kemgam Swamy* v. *Vaddadi Subamma*, 124 I.C. 290; citing 8 Cal. 178=10 C.L.R. 176 (P.C.), and 12 W.R. 75.

(47) 33 Cal. 1232, also see and, *Cf. Ijjatullah Bhuyan* v. *Chandra Banerjee*, 34 Cal. 954=11 C.W.N. 1133 (F.B.)

(48) 93 I.C. 939=1926 Pat. 218=7 P.L.T. 313=5 Pat. 361, (F.B.).

(49) *Ibid.* 5 Pat. 361 (F.B.), also see *Harry Parcival Robson* v. *Administrator-General, Punjab*, 1929 Lah. 753=30 P.L.R. 503. (*Held*, that under S. 11, if the amount decreed is in excess of the amount claimed, the determination of the amount of Court-fee cannot be left at the option of the plaintiff, but he should be called upon to pay Court-fee on the difference between the sum decreed and the value tentatively fixed by him in the plaint).

(50) *Ram Golam Sahu* v. *Chintaman Singh*, 5 Pat. 361=1926 Pat. 218=93 I.C. 939 (F.B.).

(1) *Ibid.* 5 Pat. 361, (F.B.), *supra*.

(2) *Ibid.* 5 Pat. 361 (F.B.), also see, *Jagdip Sohay* v. *Khajuri sahu*, 108 I.C. 801=9 P.L.T. 657. (*Ad valorem* Court-fee not necessary on the amount of mesne profits claimed in appeal; but, the Court-fee will become payable when mesne profits have been ascertained).

profits subsequent to the institution of the suit, but it can only be exacted after the amount has been ascertained by enquiry.[3]

463. (2) Cases to which Section is Inapplicable.—This section does not apply to the case of an interest accruing upon a decree for money passed in a mortgage-suit.[4] This section refers to suit for immoveable properties, mesne profits, and accounts, but does not apply to a suit on a mortgage, for money, nor to assessment of additional Court-fee by reason of the actual of interest *pendente lite* on a mortgage-decree.[5] A claim for compensation in the nature of rent for use and occupation from the date of the suit to the date of delivery has been held to fall under S. 11 of the Court-Fees Act;[6] but, this section does not apply to a suit for damages based on fraud, and the plaintiff is not entitled to deposit the institution fee after the decree, and before execution;[7] nor to cases under the Land Acquisition Act, where the decree awarded in appeal must be limited to the amount for which Court-fee has been paid on the memorandum of appeal.[8]

464. CONSTRUCTION OF THE SECTION.—It has been held, by the BOMBAY HIGH COURT in *Fulchand* v. *Bai Ichha*,[9] that in applying S. 11, to suits which relate to several causes of action combined in them, the term "suit" in that section must be construed as confined to that part of the suit in question which relates to mesne profits. Strictly speaking, a suit on several causes of action, including mesne profits, is not a suit for mesne profits, which, according to its ordinary and more obvious meaning, would be understood as one exclusively for mesne profits. But as the Act is a fiscal Act, it is to be construed in favour of the subject, and any other view of the section would certainly be a harsh one, and not to be accepted in the absence of a very clear expression of such intention on the part of the Legislature.[10] Similarly, it has been held by the CALCUTTA HIGH COURT, in *Kewal Kishan Singh* v. *Sovkhari*,[11] that by analogy of S. 10, the meaning of S. 11, is that in case the additional fee required in respect of the excess mesne profits is not paid, execution of the decree shall be stayed, until it is paid, and if it is not paid within the time fixed by the Court, then the suit, that is to say, the claim in respect of those mesne profits, shall be dismissed. The word "*suit*" in the clause need not mean the entire suit, including the claim for possession which had been decreed and the decree for which had been

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(3) 1930 Rang. 246=126 I.C. 224.

(4) *Krishnœrao* v. *Anloji Birupaksha*, 12 Bom.H.C. 227; *Bhawani Pershad* v. *Kutubunnissa*, 27 All. 559=A.L.J. 263=25 A.W.N. 84: (suit for sale on mortgage, involving claim for future interest).

(5) *Sadhusaran Rai* v. *Barhamdeo Lal*, 8 P.L.T. 355=1927 Pat. 230=103 I.C. 592.

(6) *Credi* v. *Kirath Chand*, 2 All. 682 (F.B.).

(7) 17 M.L.J. 625.

(8) *Mahomed Ali Amjad Khan* v. *Secretary of State*, 30 Cal. 501.

(9) 12 Bom. 98.

(10) 12 Bom. 98.

(11) 24 Cal. 173=1 C.W.N. 243.

executed, but it can fairly be construed as the suit or claim in respect of the mesne profits in respect of which the Court-fee payable has not been paid within the time fixed by the Court. Likewise, the words "*suits for account,*" in the first paragraph of this section are applicable to such portion of any suit as claims the relief by way of account.[12] It has been explained by the MADRAS HIGH COURT, that the intention of the first part of the section is not that a time should be fixed for the payment of extra Court-fee but that execution should be stayed until the extra Court-fee, payable, is paid.[13] Accordingly, where the Court by its decree directs the payment of such Court-fees within a fixed time, such direction is no part of the decree and execution of the decree is not conditional on payment within the time so fixed.[14] This view has been accepted by the CALCUTTA HIGH COURT, which holds, in accordance with the Madras decision, that the final provision of S. 11 of the Court-Fees Act does not apply to the condition set forth in the first paragraph of this section.[15] The PATNA HIGH COURT, in the Full Bench Case of *Ram Golam Sahu* v. *Chintamon Singh*,[16] has followed the Calcutta view, and holds that under S. 11 of the Court-Fees Act, a Court-fee is leviable on the future mesne profits when they are ascertained by enquiry as directed by the Court, and an application for enquiry cannot be dismissed for non-payment of Court-fee in advance.

465. COURT-FEE IN SUITS FOR PAST MESNE PROFITS.—The expression "mesne profits" of property has been defined in S. 2 (12) of the Civil Procedure Code to mean those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but does not include profits due to improvements made by the person in wrongful possession. Where the rightful owner sues for mesne profits alone, or he sues for immoveable property, with rent or mesne profits which have accrued on the property during a period prior to the institution of the suit, he may value the claim definitely or approximately.[17] Where the entire amount of mesne profits have accrued due, and the plaintiff is in a position to value the amount claimed by him, at least approximately, Court-fee is in accordance with the provisions of S. 11 of the Court-Fees Act.[18] Every suit should state approximately the amount claimed as damages or compensation in a suit for mesne profits and is to be

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(12) 6 Bom.L.R. 1102.

(13) *Periannan Chetti* v. *Nagappa Mudaliar*, 30 Mad. 32=16 M.L.J. 543.

(14) *Ibid.* 30 Mad. 32=16 M.L.J. 543.

(15) *Ganesh Chandra Mandal* v. *Promotho Nath Ganguli*, 11 I.C. 73=14 C.L.J. 20.

(16) 5 Pat. 361=93 I.C. 939=1926 Pat. 18 (F.B.)

(17) 3 P.L.J. 67=40 I.C. 579 (580), also see and *Cf.* 15 I.C. 572.

(18) *Bhupendra Kumar Chakravarti* v. *Purna Chandra*, 43 Cal. 650=24 I.C. 232 (234).

assessed with an *ad valorem* fee.[19] So far as past mesne profits are concerned the case presents no difficulty, as the procedure for collection of the additional fee is provided in paragraph 1 of S. 11 of the Court-Fees Act.[20] And, in a suit for accounts, the plaintiff is similarly required to give an approximately correct valuation for purposes of Court-fees and jurisdiction, subject to levy of proper Court-fee before execution of decree.[21] As held by the Lahore High Court, in *Harry Percival Robson* v. *Administrator-General, Punjab,*[22] before passing a final decree in a suit for accounts, the Court is bound to go into accounts and fix definitely the amount which is payable by one party to the other; and if the amount decreed is in excess of the amount claimed, the determination of the amount of Court-fee cannot be left at the option of the plaintiff, but he should be called upon to pay Court-fee on the difference between the sum decreed and the value tentatively fixed by him in the plaint. In a suit for account, the valuation for purposes of Court-fees and jurisdiction, does not disentitle the plaintiff to recover in the suit such higher amount as the evidence may show he is entitled to. The only restriction is that he cannot execute the decree without paying such additional Court-fee as may be due on the amount decreed.[23] Likewise, in a suit for possession of immoveable property, with a claim for arrears of rent in respect of the property claimed, S. 11 of the Court-Fees Act would apply:[24] and Court-fee must be paid on the difference between the amount paid on the mesne profits claimed in the plaint, and the amount ascertained to be due and decreed in favour of the plaintiff.[25] It has been held by a Full Bench of the Madras High Court, in *Parameswara Pattar's* case, that in a suit for possession of immovable property and past mesne profits, Court-fee is payable on the aggregate value of both the reliefs and not separately on value of each relief:.[26]

466. INQUIRY AS TO MESNE PROFITS.—It has been pointed out by Miller, C.J., in the Patna Full Bench case of *Ramgolam* v. *Chintamon Singh*[27] that where a suit is for the

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(19) *Nand Kumar Singh* v. *Bilas Ram Marwari*, 40 I.C. 579=1 P. L.W. 781=3 Pat.L.J. 67. *Cf. Ramgolam* v. *Chintaman*, 5 Pat. 361 (F.B.). (*Held*, that it is not necessary to value the claim for mesne profits, but that the Court-fee will become payable when mesne profits have been ascertained).

(20) *Ram Golam* v. *Chintaman*, 5 Pat. 361=93 I.C. 939 (941) (F.B.)=1926 Pat. 218. (*Held*, that the first paragraph relates to a case where the profits claimed before institution of the suit have been ascertained in the trial Court, and provides for payment of a fee upon the excess amount found due, under penalty of having the execution stayed if the fee is not paid).

(21) *Gauri Lal* v. *Rajababu*, 1929 Pat. 626.

(22) 1929 Lah. 753=30 P.L.R. 503.

(23) *Arogya Udayan* v. *Appachi Rowthan*, 25 Mad. 543.

(24 *Credi Lal* v. *Kirath Chand*, 2 All. 682 (F.B.).

(25) *Dawood* v. *Rahman*, 62 I.C. 175=10 L.B.R. 276=13 Bur.L.T. 165.

(26) 1930 Mad. 833=54 Mad. 1 (F.B.)

(27) 93 I.C. 939=5 Pat. 361=1926 Pat. 218 (F.B.)

recovery of possession of immoveable property, and for rent or mesne profits, the Court, in addition to granting a decree for possession and mesne profits up to the institution of the suit, may also direct an enquiry as to the mesne profits from the institution of the suit until either delivery of possession to the decree-holder, or relinquishment of possession by the judgment-debtor, or the expiration of three years from the date of the decree, whichever event first occurs.[28] This provision was no doubt inserted in the Code in order to prevent multiplicity of suits but the relief provided by this enactment is merely a right to an enquiry only, and a final decree in respect of the rent or mesne profits can be passed under O. XX, R. 12 (ii), when such an enquiry is directed by the Court. This procedure supersedes the procedure in S. 244 (*a*) and (*b*) of the old Code of Civil Procedure, under which questions regarding the amount of any mesne profits as to which the decree had directed an enquiry were to be determined by the execution Court.[29] But, there is nothing, either in the Civil Procedure Code, or in the Court-Fees Act, which enacts that an application to hold an enquiry directed by the decree and to which the decree-holder is already entitled under his decree, should be treated as a plaint.[30] *Mullick, J.*, observed in the same case, that if the Court considers it necessary to direct an inquiry into mesne profits, then the order for such inquiry is always a preliminary decree. With regard to the mesne profits which have accrued due subsequent to the institution of the suit, the Court cannot make any order except an order for inquiry, and that must always be a preliminary decree. The decree-holder is not liable to make with his application to ascertain the mesne profits any deposit of Court-fee as a condition precedent to the inquiry, because such an application, after a preliminary decree has been made is not in any sense a plaint and there is no statute for the levy of *ad valorem* Court-fee on it.[31] *Jwala Pershad, J.*, in the same case, comes to the same conclusion, that there is no provision in the Court-Fees Act for payment of the Court-fee on the application for ascertainment of the mesne pofits, past as well as future.[32] The change in the Civil Procedure Code as to the mode of, or the *forum* in which the enquiry as to mesne profits, is to take place does not touch the provisions in S. 11 of the Court-Fees Act, which remains unaltered; and the first paragraph of S. 11 would apply to a final decree in respect of mesne profits, past and future,

(28) See Civil Procedure Code, 1908, O. 20, R. 12, and *Harakpan* v. *Jagdeo*, 4 Pat. 57=84 I.C. 272=1924 Pat. 781.

(29) *Dawood* v. *Rahman*, 62 I.C. 175=10 L.B.R. 276, also see *Ram Golam Sahu* v. *Chintaman Singh*, 5 Pat. 361=93 I.C. 939 (941) =1926 Pat. 218 (F.B.), also see *Kedarnath* v. *Anant Prasad*, 52 I.A. 188 =4 Pat. 507 P.C.=88 I.C. 482=1925 P.C. 117 (P.C.) (under the Code of 1882, the amount of mesne profits was to be determined in execution proceedings).

(30) Per Miller, C. J., in *Ram Golam Sahu* v. *Chintaman Singh*, 93 I.C. 939 (942)=5 Pat. 361=1926 Pat. 218 (F.B.).

(31) Per Mullick, J., in *Ram Golam Sahu* v. *Chintaman Singh*, 93 I. C. 939 (943) (F.B.), *supra*.

(32) Per Jwala Prasad J., in 93 I.C. 939 (949) (F.B.), *supra*.

regarded in such a plaint as one entire claim for mesne profits. The penalty in this clause is that the decree for mesne profits, whether past or future, "*shall not be executed,*" until the excess Court-fee is paid.[33]

467. DECREE FOR FUTURE MESNE PROFITS.— Accordingly, it has been held, that when the Court by its final decree has determined the total amount of mesne profits due, in respect of both or either of the periods as the case may be, an application must be made in the form prescribed for the execution of decrees in the execution department; and, under S. 11, the executing Court is empowered to stay the execution of the decree till the Court-fee on the difference, if any, between the valuation contained in the plaint and the amount ascertained in the final decree has been paid.[34] The provision is not based on any logic, it is purely fiscal and arbitrary, and compels the plaintiff to make an estimate even though he may have no materials for doing so.[35] The law requires the plaintiff to pay Court-fees even on future mesne profits, *i.e.*, from the date of the institution of suit up to date of delivery of possession, but this excess fee can be exacted only after the amount has been ascertained by enquiry.[36] This view is in conflict with the view taken in the BOMBAY case of *Ram Krishna Bhikaji* v. *Bhimabai*,[37] noticed in an earlier paragraph, to the effect that no Court-fee can be exacted at any time in respect of future mesne profits even after ascertainment, which has not found favour in the CALCUTTA HIGH COURT:[38] and the weight of authority is now in support of the proposition that under S. 11 of the Court-Fees Act, the Court-fee is claimable upon future mesne profits also after they have been ascertained on inquiry directed in suit, after the preliminary decree, and before the final decree is executed. A decree declaring in general terms the liability of the defendants to pay mesne profits does not become operative till after the amount has been ascertained by the Court and the Court-fee prescribed by S. 11 of the Act has been paid by the decree-holder.[39] The opposite view is only correct so far that no Court-fees need be paid upon the relief for future mesne profits in the

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(33) Per Jwala Prasad J., 93 I.C. 939 (948) (F.B.), *supra.*

(34) Per Mullick, J., in 93 I.C. 939 (944), *supra.*

(35) *Ibid.* also see and *cf. Collector of Etawah* v. *Bindraban*, 1931 All. 538. (*Held*, that on payment of the Court-fees regular decrees come into existence).

(36) *Daw So* v. *Ko Pu*, 1930 Rang. 246, also see *Ramgolam* v. *Chintaman Singh*, 93 I.C. 939 (912) (F.B.), *supra.*

(37) 15 Bom. 416; also see 21 Mad. 371; 5 I.C. 880; 1, I.C. 670, and 8 I.C. 34. (F.N. 11 to 16, *ante*).

(38) *Dwarkanath Biswas* v. *Debendranath Tagore*, 33 Cal. 1232. (*Held*, that where past and future mesne profits had been claimed, S. 11 applied), also see *Ijjatulla Bhuyan* v. *Chandra Mohan*, 34 Cal. 954=11 C. W.N. 1133; and, *Puranchand* v. *Roy Radhakrishen*, 19 Cal. 132. (*Held*, that it is the duty of Court to carry out that which is ordered by its preliminary decree regardless of time).

(39) *Jitendra Nath Roy* v. *Rasiklal Sen*, 27 I.C. 300.

plaint, or on the application for ascertaining the actual amount of mesne profits due to the plaintiff.[40]

An appeal against an order about the period for which mesne profits had been decreed, does not require an *ad valorem* Court-fee on the amount of mesne profits.[41] The Court-fees will become payable when mesne profits have been ascertained.[42] The view taken in the earlier Patna case, of *Nandkumar* v. *Bilas Ram*,[43] was distinguished by Miller, C.J., but dissented from by Jwala Prasad, J., in the Full Bench case of *Ram Golam* v. *Chintaman*, which laid down the above rule. However, an appeal from a final decree under O. 20, R. 12 (2), Civil Procedure Code, in respect of subsequent mesne profits is chargeable with *ad valorem* Court-fee, under Sch. I, Art. I of the Court-Fees Act, calculated on the amount of mesne profits in dispute.[44]

468. THE MADRAS AMENDMENT.—The first paragraph of S. 11, provides for the collection of additional Court-fee in respect of mesne profits, both past and future, by enacting that the decree will not be executed till the difference in Court-fee is paid. So far as Madras is concerned, for paragraph 2 of the original section two paragraphs have been substituted by the Madras Amendment Act, the first of which provides for the levy of Court-fees on mesne profits anterior to suit by staying the passing of the final-decree till the proper fee is paid within a time fixed. This time may, however, be extended by the Court for sufficient cause. The penalty for non-payment of additional Court-fee within the time allowed, is that that the "*claim for the excess*" shall be dismissed. The second paragraph of the Madras Amendment deals with the levy of Court-fees on mesne profits subsequent to the institution of suit, by providing for stay of execution till such fee is paid.

469. DECREE FOR POSSESSION AND MESNE PROFITS.—Now reading the provisions of S. 11, Court-Fees Act as amended, with O. 20, R. 12, Civil Procedure Code, the following procedure is indicated in suits for recovery of possession of

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(40) Compare *Ramakrishna* v. *Bhimabai*, 15 Bom. 416. (*Held*, that no Court-fee was required. Where decree awarded mesne profits subsequent to institution of suit, and directed that they should be determined in execution); *Cf. Maiden* v. *Janakiramayya*, 21 Mad. 371, (Mesne profits left to be determined in execution and not ascertained); *Cf. Bhupendra Kumar Chakravarti* v. *Purnachandra Bose*, 24 I.C. 232=43 Cal. 650=13 C.L.J. 132 (Court-fee held not leviable in original Court, or in appeal in respect of possible value of mesne profits *pendenti lite*); also *cf. Banwari Lal* v. *Dayashunker*, 13 C.W.N. 815.

(41) *Jagdip Sahai* v. *Khajuri Sahu*, 108 I.C. 801=9 P.L.T. 657.

(42) *Ibid.* refers to *Ramgolam* v. *Chintaman*, 93 I.C. 939=5 Pat. 361=1926 Pat. 218 (F.B.).

(43) *Cf. Nandkumar Singh* v. *Bilas Ram Marwari*, 40 I.C. 579=3 P.L.J. 67=1 P.L.W. 781.

(44) *Pitta Balarama Naidu* v. *Sangan Naidu*, 69 I.C. 722=45 Mad. 280=1923 Mad. 19=14 L.W. 730=30 M.L.T. 83=42 M.L.J. 184, also see *Kedar Nath Goenka* v. *Chandra Mouleshwar*, 1932 Pat. 228=137 I.C. 855 =11 Pat. 532 and *Dhanukhdhari* v. *Ram Adhikari*, 1933 Pat. 81.

immoveable property and for mesne profits, to pass a decree (a) for possession of the property, (b) for past mesne profits, (c), for future mesne profits. The decree for possession is a final decree, capable of immediate execution. The decree for past mesne profits may be final, or a preliminary decree directing inquiry as to the amount thereof. The decree as to future mesne profits is always a preliminary decree. A final decree will be passed in accordance with the result of such inquiry as may be directed in respect of past or future mesne profits. Under paragraph 1 of the amended section, read with O. 20, R. 12, Civil Procedure Code, a final decree is not passed in respect of past mesne profits, on inquiry, unless the extra Court-fee be paid. The wording of paragraph 2, S. 11, do not apply to a case where a decree for past mesne profits is passed straight away without a preliminary decree directing an inquiry as to the amount of the same. In such a case paragraph 1 of S. 11, would apply, with the result that the decree is not to be executed until the extra Court-fee is paid. As regards future mesne profits, under paragraph 2 of the amended section, read with O. 20, R. 12 (2), Civil Procedure Code, a final decree may be passed for future mesne profits without payment of additional fee, though such a decree will not be executed until payment of the additional Court-fee. The Court-fee so payable on future mesne profits in execution of decree is on the sale which would be payable if a separate suit had been instituted for such profits. Thus in cases coming under paragraph 2, S. 11, as amended, the claim for the excess past mesne profits only shall be dismissed, if the necessary Court-fee be not paid; and similarly, under paragraph 3, a final decree regarding the future mesne profits shall not be executed, until the necessary Court-fee be paid, calculated on the basis of a separate suit for the said amount. Consequently, it was held by the Madras High Court, that in a case where the decree gives the following reliefs to a decree-holder, namely, possession with certain amount for past profits, and future profits at a certain ascertained rate, the decree-holder would be entitled to execute his decree with reference to possession of immoveable property, irrespective of the question whether Court-fee has or has not to be paid on the future mesne profits decreed to him by the same decree.[45]

470. **PENALTY FOR NON-PAYMENT OF ADDITIONAL COURT-FEE.**—In a suit for mesne profits, when there is no definite claim in the plaint, but only an approximate amount of past mesne profits, the plaintiff is not limited to the amount stated in his plaint:[46] and the Court may pass a decree for an amount in excess of the amount claimed, but this decree shall not be executed until the additional fee on the excess amount decree has been paid.[47] In a BOMBAY case, the plaintiff suing for an account of

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(45) *Ramalinga Sethupathi* v. *Andiappan Ambalam*, 1931 Mad. 717=34 M.L.W. 99=61 M.L.J. 424=134 I.C. 181=54 Mad. 980.

(46) *Jadoomony Dabee* v. *Hafez Mahomedaly*, 8 Cal. 295=6 Ind. Jur. 413.

(47) *Govandas Kasandas* v. *Dayabhai Savaichand*, 9 Bom. 22.

the properties and business of a certain firm, and for administration of an estate was allowed to put Rs. 130 as the value of the suit for the purpose of Court-fee, and Rs. 30 lacs for purposes of jurisdiction. The Court observed that the plaintiff if found entitled to a share in the property and assets of the firm, will not be able to obtain execution of any decree that may be passed in her favour, by reason of the provisions of S. 11 of the Court-Fees Act, until the difference between Rs. 130, and the fee which would have been payable had the suit comprised the whole of the amount decreed had been paid to the proper officer.[48] Similarly, it was held in a CALCUTTA case, that where a suit for partition of property, includes also a claim for accounts, the plaintiff is entitled to put an approximate value upon his claim in the matter, and should it turn out in investigation that the Court-fee is insufficient, the course to be pursued is that laid down in S. 11 of the Court-Fees Act.[49] The LAHORE HIGH COURT, has held that where the amount decreed is in excess of the amount claimed, the determination of the amount of Court-fee cannot be left at the option of the plaintiff; but he should be called upon to pay Court-fee on the difference between the sum decreed, and the value tentatively fixed by him in the plaint.[50]

The MADRAS High Court has held that it is not intended by the first part of S. 11 of the Court-Fees Act that the Court should fix a time for the payment of extra Court-fee in respect of mesne profits subsequent to the institution of the Suit, but that execution in respect of such profits should be stayed till such payment is made. Where the Court by its decree directs the payment of such Court-fees within a fixed time, such direction is no part of the decree and execution of the decree is not conditional on payment within the time so fixed.[1] Similarly, it has been held that any direction for the payment of the additional Court-fee for the excess sum decreed if given in the final decree, should be deemed to be a mere surplusage; and that under S. 11, a duty is cast on the executing Court to collect the deficit Court-fee, when it finds that execution is sought for the recovery of an amount over and above what was claimed in the plaint; that the costs so incurred by the additional Court-fee may be deemed to be costs relating to execution.[2] In applying S. 11 of the Court-Fees Act to a suit for partition and mesne profits, the term "decree' in that section should be taken to refer to the final, and not the interim decree in the suit. Where in a suit for partition and mesne profits the Court decrees the claim, and awards a specific sum on account of such profits, on the plaintiff paying the additional Court-fee, if any, due in respects of the profits, the Court has no power under

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(48) *Khatija* v. *Adam Huseinally*, 39 Bom. 545=29 I.C. 949.

(49) *Beni Madhab Sarkar* v. *Govinda Chandra*, 46 I.C. 165=22 C. W.N. 669.

(50) *Harry Percival Robson* v. *Administrator-General*, 1929 Lah. 753.

(1) *Perianan Chetti* v. *Nagappa Mudaliar*, 30 Mad. 32.

(2) *Lakshman Chettiar* v. *R. M. C. T. C. T. Chidambaram Chettiar*, 1933 Mad. 787=1933 M.W.N. 1116=65 M.L.J. 526=38 M.L.W. 572.

S. 11, paragraph 2 of the Court-Fees Act, to fix any time for payment, and the only penalty which the plaintiff incurs in the event of his not paying the Court-fees is that he cannot execute the decree, until he does pay the fee.[3]

The dismissal of the suit is not a penalty for default under the first paragraph. The 1st paragraph deals with a case where the profits are settled by the decree; and the 2nd paragraph deals with a case where mesne profits are ascertained in execution of the decree, the two paragraphs being mutually exclusive.[4] A Full Bench of the Patna High Court has laid down the rule that where the decree directs mesne profits to be ascertained in execution, Court-fee calculated *ad valorem* cannot be levied on the successful plaintiff when he prefers his claim in execution; it is not payable until, after the enquiry has been held and the amount of the mesne profits ascertained, he proceeds to execute his decree against the judgment-debtor.[5] Following the principle laid down in that decision, Sir Jowala Prasad, in *Sheodin Singh's* case,[6] held that no Court-fee calculated *ad valorem* could be levied from the successful plaintiff at any stage of the proceedings until the provisions of the 2nd part of S. 11, Court-Fees Act became applicable on his proceeding to execute his final decree, and that, therefore *ad valorem* Court-fee could not be levied on an appeal by the successful plaintiff, in which he claimed a higher amount than the lower Court had awarded him in the preliminary execution proceedings. However, the view taken in *Sheodhin's* case was not adopted by a Division Bench of the Patna High Court in *Kedar Nath Goenka* v. *Chandra Mouleshwar Prasad Singh*,[7] where it was pointed out that the question before the Court was as to Court-fee payable on memorandum of appeal, not on a petition for ascertainment of mesne profits; and it was held that Court-fee payable on a memorandum of appeal was that prescribed by Art. 1, Sch. I of the Court-Fees Act. In *Dhaunkhdhari* v. *Ramadhikari*,[8] James, J., followed the view of the Division Bench, on the ground that when mesne profits have once been definitely ascertained in execution, the plaintiff is certainly capable of ascertaining the exact amount which he claims, and the defendant knows definitely the liability which he is seeking to escape. Where the mesne profits

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(3) *Natharsa Rowther* v. *Muhammad Rowther*, 59 I.C. 385.

(4) *Ibid.* 59 I.C. 385.

(5) 93 I.C. 939=5 Pat. 361=1926 Pat. 218 (F.B.), cited in 1933 Pat. 81.

(6) 129 I.C. 662.

(7) 1932 Pat. 228=137 I.C. 855=11 Pat. 532.

(8) 1933 Pat. 81 (83), citing *Kanchan Mandar* v. *Kamini Prasad*, 15 I.C. 572. (*Held*, that the 2nd part of S. 11, Court-fees Act, has no application until the amount of mesne profits payable comes to be determined in execution: where a definite value is placed in the plaint on the mesne profits claimed, and the suit is decreed, the defendant appealing from the decree must pay Court-fee calculated *ad valorem* on the value of the mesne profits, claimed in the plaint, wheher the suit is only for mesne profits, or whether the claim for recovery of mesne profits accompanies a claim for recovery of land).

are not determined, the Court has no power to exact any fee until after the amount has been ascertained by enquiry,[9] nor can the suit be dismissed for non-payment of the additional Court-fee.[10]

471. DECREE BEYOND LIMIT OF PECUNIARY JURISDICTION.—There is a conflict of view between the several High Courts as to the competency of Court in suits for account, and mesne profits, to pass a decree in excess of the limits of their pecuniary jurisdiction. The Allahabad, Bombay, Madras, and Sind view is that if a suit or appeal is, when instituted, within the limits of a Court's pecuniary jurisdiction, its jurisdiction is retained, when a final decree has to be passed for an amount even in excess of its pecuniary limits. On the other hand, the Calcutta and Patna High Courts hold that a Court cannot pass a decree for an amount in excess of its pecuniary jurisdiction. The Rangoon High Court holds that in such cases, the plaint should be returned for presentation to Court with competent jurisdiction to pass a decree; and the Lahore view is that the case should be transferred to the proper Court.

472. Allahabad.—The Allahabad High Court, held in *Madho Das* v. *Ramji Patak*,[11] that in cases to which S. 11, applies, the law contemplates that it may be impossible for a plaintiff, at the inception of his suit to state correctly the value of the relief which he seeks, and convenience would require that the jurisdiction to hear a suit and make a decree, or to hear an appeal and make a decree in appeal, must be determined by the value assigned in the plaint, otherwise there would be no certainty as to the Court in which a suit, or an appeal, should be brought. Chapter III of Act XII of 1887 specifies the Court in which an original suit or an appeal shall be brought, but it does not limit the jurisdiction of any such Court as to the decree which it may make in a suit otherwise within its jurisdiction. Consequently, it was held "that it is the plaintiff's valuation in his plaint which controls the jurisdiction, not only of the first, but of the appellate Court, and not the amount which may be found and decreed by the first Court, or by the appellate Court." This was followed in *Sudarshan Das* v. *Ram Pershad*,[12] where it was held in a redemption suit that if a suit having regard to the valuation in the plaint is within the jurisdiction of a Court, such jurisdiction is not ousted by the Court

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(9) *Daw Soe* v. *Ko Pu*, 1930 Rang. 246 (1)=126 I.C. 224, *Ram Golam Sahu* v. *Chintaman Singh*, 1926 Pat. 218=93 I.C. 939=5 Pat. 361 (F.B.), compare *Dwarka Nath Biswas* v. *Debendronath Tagore*, 33 Cal. 1232. (*Held*, that where a plaint asked for past as well as future mesne profits, and an amount was claimed, and Court-fee paid for past mesne profits only, S. 11 of the Court-Fees Act applied).

(10) *Ram Golam Sahu* v. *Chintaman Singh*, 1926 Pat. 218=93 I.C. 939=5 Pat. 361 (F.B.).

(11) 16 All. 286=14 A.W.N. (1894) 84.

(12) 7 I.C. 385=7 A.L.J. 963=33 All. 97, also see 10 I.C. 402, and, see and *cf. Khudajiatul Kubra* v. *Amnia Khatun*. (The value of a suit may be exaggerated, or under estimated; but the Court has to rely on the valuation of the subject-matter, which is given in the plaints to determine whether it is within its pecuniary jurisdiction).

finding that a decree for a sum exceeding the limits of its pecuniary jurisdiction should be given to the plaintiff.

473. Bombay.—The principle enunciated by the Bombay High Court, in *Lakshman Bhatkar* v. *Babaji Bhatkar*,[13] is that what *prima facie* determines the jurisdiction is the claim, or the subject-matter of the claim, as estimated by the plaintiff, and this determination having given the jurisdiction, the jurisdiction itself continues whatever the event of the suit, unless a different principle comes into operation to prevent such a result to make the proceeding from the first abortive. The view has been followed in *Ambadas* v. *Vishnu*,[14] where it was observed that the jurisdiction in the first instance is determined under the Bombay Civil Courts Act by the valuation in the plaint, and not by the result of the decree, whatever it might turn out to be. For instance, if a suit has commenced within the jurisdiction and by the addition of mesne profits after the date of institution the amount is increased to an amount beyond the jurisdiction, a decree for the full amount is nevertheless perfectly valid, and with jurisdiction.[15] Thus, the jurisdiction of the Subordinate Judge depends on the valuation of the claim as made in the plaint, and especially in a suit for accounts, the jurisdiction to pass a decree for more than five thousand rupees is not excluded when it is found on taking accounts that a sum of more than five thousand rupees is due.[16]

474. Calcutta.—The Calcutta High Court, held in *Golap Sundari Debi* v. *Indra Kumar Hazra*, that under the Court-Fees Act, in a suit for accounts, the plaintiff has to state the amount at which he values the relief sought, and has to pay Court-fee on that footing. He cannot also execute the decree for an amount in excess of the amount claimed, until he pays the Court-fees upon the difference. However, these provisions do not touch the fundamental question of the highest amount for which a Court of restricted jurisdiction is competent to make a decree. S. 8 of the Suits Valuation Act, only shows that, for purposes of jurisdiction, the value of the suit must be taken to be determined by the value determinable for the computation of Court-fees. This also does not conclude the question raised. Upon first principles, the Court was of opinion, that the jurisdiction of a Court being the authority to hear and determine a cause, which can be given only by law, "if a Court of limited pecuniary jurisdiction, therefore, took cognizance of a suit in which the sum claimed was larger than the amount over which the Court had jurisdiction, any judgment

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(13) 8 Bom. 31, followed in *Shamrao Pandoji* v. *Niloji Ramaji*, 10 Bom. 200.

(14) 1927 Bom. 83=100 I.C. 109=50 Bom. 839=28 Bom.L.R. 1461.

(15) *Ibid.* 1927 Bom. 83=50 Bom. 839.

(16) *Krishnaji Vinayak* v. *Motilal Magandas*, 1929 Bom. 337=31 Bom.L.R. 476; citing, *Shamrao Pandoji* v. *Niloji Ramji* (10 Bom. 200); *Ramchandra* v. *Janardan* (14 Bom. 19); and, *Ambadas* v. *Vishnu*, 1927 Bom. 83=50 Bom. 839.

it might give would be void.''[17] Again in the Full Bench case of *Bidhyadhar* v. *Manindra Nath*,[18] reference is made to the conflicting views of the same Court in some earlier rulings[19] but it was held by the Court (Walmsley, J., *contra*) that where a suit is brought in the Court of a Munsiff for recovery of possession of land and mesne profits *pendente lite* which are claimed or assessed at a sum beyond the pecuniary jurisdiction of the munsiff, the Court has jurisdiction to fix such mesne profits and pass a decree beyond his pecuniary jurisdiction.[20] B. B. Ghose, J., in the leading judgment in this case, observes that the value of the suit in which the plaintiff claims recovery of possession of immoveable property and also asks for mesne profits *pendente lite*, must obviously be the value of the property, as the plaintiff is not required nor is it possible for him to value even approximately the amount of such mesne profits which must vary according to the period of time the defendant retains possession of the property, that S. 19 of Act XII of 1887, and S. 6 of the Civil Procedure Code have reference to the value of the suit for the purpose of entertaining jurisdiction, and if a suit is rightly entertained, as within the jurisdiction of the munsif, and a decree passed, his power to grant the proper and adequate relief is not affected by any event which increases the value of the relief during the pendency of the suit.[21] Walmsley, J., held on the other hand that the pecuniary limits of a munsif's jurisdiction as defined in the Civil Courts Act, gave no suggestion that circumstances may arise which will not merely enlarge those limits but even withdraw them altogether. As regards the question of mesne profits *pendente lite* his view was that these prospective mesne profits are no part of the plaintiff's cause of action, and are not to be considered in determining the value of the suit.[22]

475. Lahore.—In *Manna* v. *Samandu*,[23] where the suit was for rendition of accounts of a partnership, the Punjab Chief Court, held that where the actual amount due to the plaintiff is at the inception of the proceeding unknown to the latter, and can be

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(17) 1[I.C. 86 (89)=9 C.L.J. 367=13 C.W.N. 493=5 M.L.T. 60.

(18) 89 I.C. 726=29 C.W.N. 869=42 C.L.J. 49=1925 Cal. 1076 (F.B.).

(19) *Bhupendra Kumar* v. *Purna Chandra*, 8 I.C. 34=43 Cal. 650=13 C.L.J. 132=15 C.W.N. 506. (*Held*, that a Munsif cannot entertain an application for investigation of mesne profits *pendente lite* when the claim is laid at over Rs. 1,000); and, *Baikunth Nath* v. *Mohananda Bovat Modak*, 58 I.C. 170=24 C.W.N. 342. (Munsif returned plaint for presentation to subordinate Judge, where application for ascertainment of mesne profits assessed the profits at over Rs. 5,000). Compare, *Rameshwar* v. *Dilu*, 21 Cal. 550. (Munsif held competent to ascertain mesne profits and give effect to his order made in the decree, notwithstanding these profits exceeded the pecuniary jurisdiction of his Court): and also *cf. Penchoram Tekadar* v. *Kina Haldar*, 15 I.C. 252=40 Cal. 56. (Court held to have jurisdiction to award mesne profits ascertained).

(20) 89 I.C. 726 (730)=1925 Cal. 1076=53 Cal. 14 (F.B.), *supra*.

(21) 89 I.C. 726 (730, 731)=1925 Cal. 1076, *supra*.

(22) 89 I.C. 726 (729)=1925 Cal. 1076, *supra*.

(23) 46 P.R. 1906=94 P.L.R. 1906=62 P.W.R. 1906.

ascertained definitely only after inquiry, the arbitrary value, allowed by law to be placed on the suit is merely tentative, and if the actual value is found to exceed the pecuniary limits of the Court's jurisdiction, the Court is not competent to pass a decree in the case, for the said amount, but should return the plaint for presentation to a Court having jurisdiction. It was doubted, whether both the plaintiff and the defendant can agree to a decree within the Court's pecuniary limits being passed. In the Full Bench case of *Muhammad Afzal Khan* v. *Nand Lal*,[24] the view taken was, that the Court may have *prima facie* jurisdiction to entertain a suit, the value of which assessed, under Suits Valuation Act, is within its pecuniary jurisdiction, but this *prima facie* jurisdiction ceases on the Court being satisfied that the actual value of the suit, as discovered from the pleadings, is beyond its jurisdiction; and a Court is not competent to pass a decree for possession of property on payment of a sum higher than the limits of its pecuniary jurisdiction. This ruling was given in a suit for pre-emption; but 46 P.R. 1906, is referred. The decision in *Manna* v. *Samandu*[25] has, however been distinguished and not followed in *Fazal Karim* v. *Municipal Committee Jullundhar*,[26] on the ground that the fact that the amount payable to plaintiff in the suit for accounts was likely to exceed the pecuniary limits of the Court was discovered *before* a preliminary decree was passed, and the plaint was directed to be returned to the Court having jurisdiction. In the later case,[27] where a preliminary decree had been passed by the Subordinate Judge with jurisdiction, and it was only the facts which transpired after the decree had been passed which ousted his jurisdiction to deal with the further proceedings in the case, it was held that the preliminary decree passed by the Court was not void: but it could not pass a final decree for the amount found due, and the proper order for the appellate Court was to *transfer* the case to the Court having jurisdiction to try the suit and not to return the plaint for presentation to proper Court. The Court to which the case is thus transferred cannot ignore the preliminary decree, but it can exercise its jurisdiction to hold a *denovo* trial from the stage after the passing of the preliminary decree.[28]

476. Madras.—In *Arogya Udayan* v. *Appachi Rowthan*,[29] where in a suit for account, the plaintiff had valued the suit at an amount indicating the District Munsif's Court, as the proper Court, it was held that the plaintiff could not be allowed to revise

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(24) 16 P.R. 1908 (F.B.).

(25) 46 P.R. 1906.

(26) 1929 Lah. 107=118 I.C. 537.

(27) 1929 Lah. 107, *supra*.

(28) *Ibid*.

(29) 25 Mad. 543 (544), also see *Ratnasawmi Chetty* v. *Ratnammal*, 24 I.C. 135=1 L.W. 446=15 M.L.T. 415=27 M.L.J. 388. (*Held*, that the question of the pecuniary jurisdiction of a Court is determined not by the relief awarded, but by the valuation of the suit in accordance with the terms of the plaint).

the valuation so as to oust the jurisdiction of such Court, and the munsif acted with material irregularity in permitting the return of the plaint, and its presentation to the Subordinate Judge's Court. It was observed that in a suit for an account, "the valuation for purposes of Court-fee and jurisdiction does not disentitle the plaintiff to recover in the suit such higher amount as the evidence may show he is entitled to. The only restriction is that he cannot execute the decree without paying such additional Court-fee as may be due on the amount decreed." This ruling was followed in the Full Bench case of *Putta Kannayya Chetti* v. *Rudra Bhatla Venkata Narasayya*;[30] where it was held that when a suit for accounts is instituted in a District Munsif's Court, the plaintiff valuing the subject-matter of the suit at an amount within the pecuniary jurisdiction of the district munsif, and a decree is passed for more than Rs. 5,000, the appeal from that decree lies to the district Court, and not the High Court. The decision in *Ayyalu Naidu* v. *Ramasami Raja*,[31] was overruled. THE ORDER OF REFERENCE fully discusses the question, and points out that in suits for account, and mesne profits, the plaintiff may not be in a position to know precisely what amount he is entitled to, and under O. 7, R. 2, Civil Procedure Code, he is entitled to claim a certain amount approximately, and is bound to pay Court-fee on that amount in the first instance. In these two classes of suits, the plaintiff can obtain a decree for more money than what he approximately claimed in the plaint, but he is obliged to pay for the extra amount which he has obtained: and this obligation is enforced by certain penalties, under S. 11 of the Court-Fees Act. It was observed that the levy of extra fee does not necessitate any amendment in the valuation of the suit, and does not affect the validity of the adjudication. In these classes of cases, it is obviously inconvenient, if not impossible, to change the value according to the actual amount found to be due, and there is no conflict of view on the question that the Court which has jurisdiction to try the original suit must then depend on the amount or value of the subject-matter of the suit as fixed by the plaintiff. In suits for accounts, of necessity, the plaintiff is allowed to fix his own valuation; and when once the valuation is fixed, there is no provision of law which allows the plaintiff to change or to alter that valuation at his pleasure. Further, the value of the subject-matter of the suit must be its value at the institution of the suit. The case-law has been fully reviewed in this judgment, and the conclusions reached are "that in every case when the Court is seized of jurisdiction, it cannot and does not lose it by any change in the value of the subject-matter of the suit after the institution of the suit, or by the precise ascertainment of its value in cases which do not admit of such ascertainment at the time of institution, except when the plaint is allowed to be amended:" and, "on the

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(30) 39 I.C. 439=32 M.L.J. 221=5 L.W. 580=(1917) M.W.N. 367=40 Mad. 1 (F.B.).

(31) C.A. 131 of 1915, followed *Ijjatullah Bhayan* v. *Chandra Mohan Banerji*, 34 Cal. 954=6 C.L.J. 255=11 C.W.N. 1133; and *Madhavi Amma* v. *Kunhunni Menon*, 4 M.L.J. 43.

same principle the Court can award such sum as it finds due to the plaintiff, although such sum is above the pecuniary limits of its jurisdiction.'' Further, the value of suit must be its valuation at the time of its institution, and the amount or value of the subject-matter as fixed in the plaint should determine the Court to which the appeal lies.[32]

477 Patna.—The Patna High Court, in *Dinanath Sahai* v. *Mayawati Kuer,*[33] has differed from the value of Calcutta High Court in *Bhupendra Kumar Chakravarti* v. *Purna Chander Bose.*[34] Das, J., held that proceedings for ascertainment of mesne profits *pendente lite* are proceedings in the suit: and there is no justification for the view that the Court having seizin of the case, may pass a decree for possession of the property, and then, if the claim for mesne profits exceeds its pecuniary jurisdiction, solemnly hand over the case to another Court having pecuniary jurisdiction over the subject-matter of the suit. There is no sanction in the code for separating the trial of a proceeding in a suit from the trial of the suit. The code, on the other hand, directly authorizes the Court that passes the decree for possession, to deal with the question of mesne profits. Under O. 20, R. 12, the Court competent to pass a decree for possession is also competent to pass a decree for mesne profits *pendente lite,* whatever may be the amount claimed by the decree-holder. ''S. 19 of Act XII of 1887, is a general provision that regulates the jurisdiction of the munsif in regard to all original suits. It does not pretend to legislate in regard to special jurisdiction that may be exercised by the munsif by virtue of any special enactment for the time being in force.''[35] The observations of Jwala Prasad, J., in *Muhammad Jakariya* v. *Muhammad Hafiz,* were also to the same effect. It was pointed out that the inquiry as to mesne profits is a part of the proceedings in the suit consequent upon a preliminary decree, and is terminated by a final decree after the mesne profits are ascertained. In view of the law as now embodied in the present Civil Procedure Code, the trial Court would have jurisdiction to enquire into the mesne profits, although the amount of mesne profits claimed in the application for enquiry, or that found by the enquiry may exceed the pecuniary limits of the jurisdiction of the original Court.[36]

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(32) 40 Mad. 1=39 I.C. 439 (F.B.), *supra*: Follows: *Arogya Udayan* v. *Appachi Rowthan,* 25 Mad. 543=12 M.L.J. 35. Relied on *Madho Das* v. *Ramji Patak* (16 All. 286) and *Sudarshan Das* v. *Ram Pershad* (7 I.C. 385=33 All. 97). Not followed *Golapsundari Debi* v. *Indrakumar Hazra,* 1 I.C. 86=13 C.W.N. 493=9 C.L.J. 367=5 M.L.J. 360, Disc: *Bhupendra Kumar Chakravarti* v. *Purna Chandra,* 8 I.C. 34=43 Cal. 650, Ref: *Rameswar Mahton* v. *Dilu Mahton,* 21 Cal. 550, foll. in 40 Cal. 56.

(33) 60 I.C. 346=6 P.L.J. 54=2 P.L.J. 143=1921 Pat. 69.

(34) 8 I.C. 34=13 C.L.J. 132=15 C.W.N. 506.

(35) 60 I.C. 346 (348, 349), *supra.*

(36) 41 I.C. 231 (233).

478. Rangoon.—The Rangoon High Court in *Har Dayal* v. *Ramdoo*,[37] takes the view that in a suit for an account, the value fixed by the plaintiff is approximate and tentative only. It gives the Sub-divisional Court jurisdiction to take up the case, but it does not give that Court jurisdiction to pass a decree for more than Rs. 5,000. If, after enquiry, it is found that the tentative value is not correct, and that the real value of the subject-matter of the suit is over Rs. 5,000, the proper course would be for the sub-divisional Court to return the plaint for presentation to the proper Court.[37] This view agrees with that of the Calcutta High Court, in *Bhupendra Kumar Chakravarti* v. *Purnachandra Bose*,[38] which is repeated in *Sarada Sundari* v. *Atramannessa Khatun*.[39] The same view was taken in *Golap Sundra Debi* v. *Indra Kumar Hazra*,[40] and again in *Hirjibhai* v. *Jamshedji*.[41]

479. Oudh.—In a suit for account, or mesne profits, S. 11 of the Court-Fees Act permits the plaintiff to make an estimate of what he considers to be due to him, and to pay the Court-fees thereon. The Court is then competent to pass a decree even for more than the amount at which the plaintiff valued his relief, provided the difference between the fee actually paid, and the fee payable on profits decreed shall have been paid to the proper officer.[42]

480. Nagpur.—In *Olpherts* v. *Arjundas*,[43] the point for determination was, "what is the value for purposes of jurisdiction for a suit for an amount to be ascertained on a rendition of accounts." After noticing the conflict of views between the Calcutta, Bombay and Punjab cases on one side, and the Allahabad and Madras view, that "very great dislocation of business would occur if a suit had to be transferred to a higher Court after accounts were taken, and if the plaintiff's relief were limited to the pecuniary jurisdiction of the Court in which the suit is filed, injustice might often occur where the plaintiff, through no fault of his own, has under-estimated the amount due to him on accounts." Thus, according to Nagpur Court, the value of a suit for accounts, both for purposes of original trial, and appeal, is its value as original tentatively stated in the plaint by the plaintiff, and the Court, trying such suit, does not lose its jurisdiction merely because the amount found due after inquiry happens to exceed the limit of the jurisdiction of the Court.[44]

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(37) 86 I.C. 568 (569)=2 Rang. 408=1924 Rang. 354=3 Bur.L.J. 207.

(38) 8 I.C. 34=43 Cal. 650=13 C.L.J. 132=15 C.W.N. 506.

(39) 78 I.C. 747=28 C.W.N. 710=61 C. 737=1924 C. 738.

(40) 1 I.C. 86=13 C.W.N. 493=9 C.L.J. 367.

(41) 21 I.C. 783=15 Bom.L.R. 1021.

(42) *Durga Bharthi* v. *Bhagwati Prasad*, 64 I.C. 101=24 O.C. 209=8 O.L.J. 477.

(43) 20 I.C. 928=9 N.L.R. 112, follows *Kalooram* v. *Ramkishen*, 8 C.P.L.R. 86.

(44) *Ibid. Cf.* 34 Cal. 954=6 C.L.J. 255=11 C.W.N. 1133 (F.B.) and 8 I.C. 34=15 C.W.N. 506=13 C.L.J. 132; also 46 P.R. 1906=94 P.L.R. 1906, and 20 Bom. 265; see 16 All. 286; 33 All. 97; and 25 Mad. 543.

481. Sindh.—In *Hotchand Uttamchand* v. *Tejumal Mulchand*,[45] after an elaborate discussion of the case-law, the Sind Judicial Commissioner's Court has reached the conclusion that in a suit in which a plaintiff is permitted to value his claim tentatively for purposes of Court-fees, and such valuation determines the jurisdiction, it is competent for the Court to pass a decree in his favour in excess of the pecuniary limits of its jurisdiction, provided it has jurisdiction to entertain the suit at its inception.

482. Summary.—There is a remarkable conflict of view between different High Courts as to the competency of Courts, in suits falling under S. 11, Court-Fees Act, to pass a decree in excess of the limits of their pecuniary jurisdiction. The ALLAHABAD High Court takes the view that the jurisdiction to hear a suit or appeal, and to make a decree in the suit or appeal, must be determined by the plaintiff's valuation in his plaint.[46] The BOMBAY view is, similarly, to the effect that the jurisdiction determined, in the first instance, by the valuation in the plaint is not affected by the result of the suit, whatever it might turn out to be.[47] The MADRAS High Court, holds that the plaintiff's valuation of suit determines jurisdiction, for entertainment of suit, but the Court can pass a decree in excess of the limits of its pecuniary jurisdiction.[48] The PATNA High Court, holds that the special jurisdiction conferred by the Civil Procedure Code, to avoid a multiplicity of suit, empowers the Court which is competent to pass a decree for possession, also to pass a decree for mesne profits *pendente lite*, even beyond limits of its pecuniary jurisdiction.[49] The NAGPUR[50] and OUDH[1] Courts follow the same view. The SINDH Judicial Commissioner's Court also follows the Allahabad and Madras view.[2] On the other hand, the LAHORE,[3] and

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(45) 89 I.C. 353=1925 Sind 324.

(46) *Madho Das* v. *Ramji Patak*, 16 All. 286=1894 A.W.N. 84. *Sudarshan Das* v. *Ram Pershad*, 7 I.C. 385=33 All. 97, also see *cf. Khudajiatul Kubra* v. *Amina Khatun*, 80 I.C. 413=46 All. 250.

(47) *Lakshman* v. *Babaji*, 8 Bom. 31; *Shamrao Pandoji* v. *Neloji Ramaji*, 10 Bom. 200; *Ramachandra* v. *Janardhan*, 14 Bom. 19; *Ambadas* v. *Vishnu*, 1927 Bom. 83=100 I.C. 109=50 Bom. 839; but *Cf. Hirjibhai* v. *Jamshedji*, 21 I.C. 783=15 B.L.R. 1021. (The amount of value or the subject-matter of a suit can in no case exceed the limits of the pecuniary jurisdiction of the Court in which it is instituted and tried).

(48) *Arogya Udayan* v. *Appachi Rowthan*, 25 Mad. 543 (544), *Ratnaswami Chetty* v. *Ratnammal*, 24 I.C. 135=27 M.L.J. 388. *Putta Kanayya Chetti* v. *Rudra Bhatla*, 40 Mad. 1=39 I.C. 439 (F.B.).

(49) *Dina Nath Sahai* v. *Mayawati Kuar*, 60 I.C. 346=1921 Pat. 69.

(50) *Olpherts* v. *Arjandas*, 20 I.C. 928=9 N.L.R. 112; 8 C.P.L.R. 86.

(1) *Durga Bharthi* v. *Bhagwati Prasad*, 64 I.C. 101=24 O.C. 209.

(2) *Hotchand Uttamchand* v. *Tejumal Mulchand*, 89 I.C. 353=1925 Sind 324.

(3) *Manna* v. *Samandu*, 46 P.R. 1906, *cf. Fazalkarim* v. *Municipal Committee, Jullundhar*, 1929 Lah. 107=118 I.C. 537.

RANGOON,[4] High Courts draw a distinction between the jurisdiction to entertain a suit, and the competency to decree a claim, in excess of Court's limit of pecuniary jurisdiction. The CALCUTTA[5] view, is to the effect that a Court of restricted jurisdiction can only give a decree within and not beyond the limits of its pecuniary jurisdiction. But, in a Full Bench case, the majority view is that where the Court has jurisdiction to entertain a suit for mesne profits and recovery of possession of immoveable property, it has jurisdiction to fix mesne profits *pendente lite*.[6]

483. VALUATION OF SUIT FOR PURPOSES OF JURISDICTION.—In suits for accounts, or for mesne profits, which are not excluded by S. 8 of the Suits Valuation Act from the application of the rule, the value for purposes of Court-fees and jurisdiction shall be the same.[7] As observed by the Rangoon High Court, in *Hardayal* v. *Ram Doo*,[8] "in a suit for an account it is open to the plaintiff to value his suit for purposes of Court-fee at any figure he chooses, and, having done so, the value for purposes of jurisdiction is automatically fixed by reason of the provisions of S. 8, of the Suits Valuation Act." The value of the suit for purposes of Court-fee is the valuation put on the plaint except where the valuation is not *bona fide* but made merely to after the *venue*.[9] Accordingly the approximate value stated in the plant is to be taken as the value of the suit, both for purposes of Court-fees and jurisdiction.[10] Mesne profits subsequent to suit cannot be taken into consideration in ascertaining the value of the suit.[11] But in a suit for possession of immoveable property and past mesne profits, Court-fee is payable on the aggregate value of both the reliefs and not separately on value of each relief. The preponderance of authority is in favour of not treating these two claims as distinct subjects under S. 17, Court-Fees Act, but as one entire claim.[12] Accordingly, it has been held, in *Deonandan*

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(4) *Hardayal* v. *Ramdeo*, 86 I.C. 568 (569)=2 Rang. 408=1924 Rang. 354.

(5) *Golap Sundari Debi* v. *Indra Kumar Hazra*, 1 I.C. 86=13 C.W.N. 493=9 C.L.J. 367=5 M.L.T. 360; *Panchoram* v. *Kinu Haldar*, 40 Cal. 56=15 I.C. 252; *Bhupendra Kumar Chakravarti* v. *Purna Chandra Bose*, 8 I.C. 34=43 Cal. 650=13 C.L.J. 132=15 C.W.N. 506, *Sarada Sundari* v. *Akramennessa*, 78 I.C. 747=51 Cal. 737=28 C.W.N. 710=1924 Cal. 783.

(6) *Bidhyadhar* v. *Manindra Nath*, 89 I.C. 726=1925 Cal. 1076=29 C.W.N. 869=42 C.L.J. 49 (F.B.).

(7) *Baru* v. *Lachhman*, 111 P.R. 1913=22 I.C. 503 (F.B.).

(8) 86 I.C. 568=2 Rang. 408=1924 Rang. 354=3 Bur. L.J. 307.

(9) *Madho Das* v. *Ramji Patak*, 16 All. 286=(1894) A.W.N. 84. ("value" of suit means the value assigned by the plaintiff in his plaint, and not the value as found by the Court, unless it appears that, either purposely, or through gross negligence, the true value has been altogether misrepresented by the plaintiff).

(10) *Arogya Udayan* v. *Appachi Rowthan*, 25 Mad. 543.

(11) *Ramgolam Sahu* v. *Chintaman Singh*, 5 Pat. 361 (F.B.).

(12) *Parameswara Pattar*, 1930 Mad. 833 (F.B.), [followed *Kishori Lal Roy* v. *Sharat Chunder Mozumdar*, 8 Cal. 593=10 C.L.R. 359 (F.B);

Misra v. *Ganga Prasad*,[13] that where in a suit for recovery of possession of land and antecedent mesne profits the suit is valued for Court-fee at the total amount of the value of land and mesne profits, and the claim being decreed, the defendant prefers an appeal, the appeal is to be valued at the same amount as in the original suit, even though the Court may order that the amount of mesne profits should be determined in separate proceedings.

484. VALUATION OF SUIT IN APPEAL—Forum of appeal.—There is a conflict of authority as to the forum of appeal when mesne profits or damages are claimed in a suit for possession, the original valuation being less than Rs. 5,000, and the amount found due being in excess of that figure.

485. Calcutta.—The general rule laid down by the CALCUTTA HIGH COURT, in the case of *Golab Khan* v. *Abdul Wahab Khan*,[14] and in the Full Bench case of *Ijjatulla* v. *Chandra Mohan*[15] is to the effect that "where a plaintiff *definitely* fixes a certain sum as the amount of his claim, this must be considered as the value of the original suit, and the appeal would lie accordingly; but when he fixes a certain sum as the amount of his claim only approximately or tentatively, and prays that the amount of his claim may be ascertained in the course of the suit, then the amount found due by the Court to be due to him must be regarded as the value of the original suit for the purpose of determining the forum of appeal." Mookerji, J., in the same case, was of opinion that it is not so much the adjudication of the amount by the Court, as the acceptance of the adjudged amount by the plaintiff as the value of the relief claimed by him, which determines the value of the suit, and consequently the forum of appeal, and he remarks that "if this principle is kept in view, there is little or no difficulty in harmonising the cases on the subject to be found in the books." According to the Calcutta High Court, the valuation of the suit, for purposes of appeal, is the value of the subject-matter in appeal, including the value of the immoveable property, and the mesne profits decreed or ascertained by the first Court. The ALLAHABAD AND BOMBAY High Courts take the same view as the Calcutta High Court.

Illustrations.

(1) The value of original suit does not mean the valuation fixed upon by the plaintiff at the outset, but the value of the property *plus* the assessed amount of mesne profits, for the purpose of determining the forum of appeal from the preliminary decree; and, where no amount is fixed approximately or nominally upon the

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and, Reference under Court-Fees Act, 16 All. 401=(1894) A.W.N. 124], also see 17 Cal. 705. (*Held*, that the value of the suit depends not merely upon the value of property sought to be recovered, but also upon the value, or amount of the profits recoverable).

(13) 1929 Pat. 731=8 Pat. 906=120 I.C. 313=10 P.L.T. 622.

(14) 31 Cal. 365; followed in *Ijjatulla* v. *Chandra Mohan*, 34 Cal. 954 (F.B.).

(15) 34 Cal. 954 (F.B.).

mesne profits, the value of the property alone will determine the forum of appeal.[16]

(2) Plaintiff valued his suit at over Rs. 5,000, and on defendant's objection, Court found the value of suit was less than Rs. 5,000, but plaintiff contested this finding on appeal, valuing it at Rs. 7,500. *Held* that appeal lay to High Court.[17]

(3) Plaintiff valued the land at Rs. 2,800, and claimed mesne profits estimated at Rs. 1,200, but the mesne profits were valued by the subordinate Judge at Rs. 2,300. *Held* that the appeal to High Court was competent.[18]

(4) Plaintiff valued his claim approximately at Rs. 600, in a suit for account. The subordinate Judge passed a decree in his favour awarding Rs. 30,000, to plaintiff: and plaintiff paid additional Court-fee under S. 11. *Held* that defendant's appeal against the decree, lay to High Court.[19]

(5) If before decree, deficiency has been made good by the plaintiff, the value of the suit would be the value after the deficiency is made good, and not the value which the plaintiff had originally placed thereon.[20]

486. Lahore.—The ordinary rule governing the value of a suit for purposes of jurisdiction is that the valuation of a suit depends upon the value of the subject-matter thereof.[21] In a suit falling under S. 11, Court-Fees Act, the value fixed by the plaintiff in his plaint is only a tentative one, and "there is no valid reason why this approximate value should be treated as binding upon the parties for the purpose of determining the forum of the suit as well as that of appeal."[22] Accordingly, it was held that the amount ascertained by the Court to be due to the plaintiff, and not the sum at which he values his claim tentatively and approximately, should be regarded as the value of the suit for the purpose of determining the forum of appeal. On the opposite view, some anomalies, and absurd results will follow. For example, if a Court with limited jurisdiction up to Rs. 1,000, entertains a suit valued tentatively at Rs. 500, and decrees the claim, finding one lac due to plaintiff, the appeal would lie to a subordinate Judge, whose decision on question of fact would be final.

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(16) *Mohini Mohandas* v. *Satischandra Roy*, 17 Cal. 704 (706). *Cf. Boidya Nath Adya* v. *Makhanlal*, 17 Cal. 680.

(17) *Nilmoney Singh* v. *Jagabandhu Roy*, 23 Cal. 536.

(18) *Jogendra Nath* v. *Ramgopal*, 1927 Cal. 616=103 I.C. 639=45 C. L.J. 462.

(19) *Ibrahimji* v. *Bejanji Jamsed Ji*, 20 Bom. 265.

(20) *Goswami* v. *Badhraj Des Raj*, 32 All. 222=7 A.L.J. 203=5 I.C. 875.

(21) *Jaswant Ram* v. *Moti Ram*, 96 I.C. 890 (F.B.)=1926 Lah. 376 (F.B.)=7 Lah. 570 (F.B.). (*Held*, that in a suit for redemption of immoveable property the value for purposes of jurisdiction is the amount found by the Court to be the value of the mortgagee's charge on the property and not the amount alleged by plaintiff to be due to the mortgagee).

(22) *Budhamal* v. *Rallia Ram*, 1928 Lah. 157 (2)=9 Lah. 23=29 P.L.R. 320=110 I.C. 631. Per Sir Shadilal, C. J.

487. Madras.—The Madras High Court has held in *Kannaya* v. *Venkata*,[23] that the rule to be applied to suits, as well as appeals, is that the amount or value of the subject-matter as fixed in the plaint should determine the Court to which the appeal lies. This is on the ground that the theory of an appeal is that the suit is continued in the Court of appeal and reheard there.[24] The value of the suit does not change in the first Court, and likewise it does not change when the same suit is taken to the Court of appeal. Accordingly, where a suit for accounts was instituted in a munsif's Court, the plaintiff valuing the subject-matter of suit at an amount within the limits of Court's pecuniary jurisdiction, and a decree was passed for more than Rs. 5,000, it was held that the appeal from munsif lay to the district Judge, and not to the High Court. This view is directly opposed to that of the Lahore High Court:[25] and, is at variance with that of the Full Bench of Calcutta High Court.[26]

488. Patna.—The Patna view agrees with that of the Madras High Court. In *Manik Chand Ram* v. *Bibi Najiban*,[27] where plaintiff sued for recovery of possession of land, and mesne profits; and the suit was decreed, but the Court did not ascertain the amount of mesne profits due; and, the defendant appealed challenging the whole decree, it was held that the appeal must be valued at the same value as the suit, and must bear same Court-fee. Again, in *Satya Kinkar Sahana* v. *Shiba Prasad Singh*,[28] the case-law was reviewed, and it was held that in a suit for specific damages valued at Rs. 4,199, and such other damages to which, on inquiry, the plaintiff might be found entitled, where the district judge on appeal awarded over Rs. 10,000, as damages, it was held, that the valuation of suit was under Rs. 5,000, and the District Judge had jurisdiction to hear the appeal. It was observed that if the Court of first instance dismisses a suit or awards less than Rs. 5,000, and once the District Judge has assumed jurisdiction, he legally has jurisdiction to make a decree for damages for a sum exceeding Rs. 5,000, his original jurisdiction being unlimited. In *Dhanukhdari* v. *Ramadhikari*,[29] where a suit for recovery of mesne profits valued at Rs. 13,000, was decreed for the sum of Rs. 16,000, on the report of a Commissioner adopted by the subordinate Judge, and all the defendants were made jointly liable, it was held, following *Kanchan Mandir* v. *Kamini Prashad*,[30] that *ad valorem* Court-fee was payable on the appeal from the decree of mesne profits which had been ascertained, and the value of the appeal for the purposes of Court-fee was that of the entire decree, the defendant appealing being liable for the whole

(23) 40 Mad. 1 F.B.=39 I.C. 439 (F.B.).
(24) *Krishnamachariar* v. *Mangammal*, 26 Mad. 91.
(25) *Budhamal* v. *Rallia Ram*, 9 Lah. 23.
(26) *Ijjatullah* v. *Chandra Mohan*, 34 Cal. 954 (F.B.).
(27) 49 I.C. 962.
(28) 52 I.C. 452=4 P.L.J. 447.
(29) 1933 Pat. 81.
(30) 15 I.C. 572.

decree. It was observed, following *Kedar Nath Goenka's case*,[31] that when mesne profits have once been definitely ascertained in execution, the plaintiff is certainly capable of ascertaining the exact amount which he claims, and the defendant knows definitely the amount of the liability which he is seeking to escape. This view, it may be pointed out differs from the decision of the taxing Judge in *Sheodhin Singh's* case,[32] following the principle of the Full Bench ruling in *Ram Golam Sahu* v. *Chintaman Singh*.[33]

12. (i) Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit.

Decision of question as to valuation.

(ii) But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of S. 10, paragraph ii, shall apply.

Synopsis.

1. Scope of the section.
2. Application of section.
3. Question as to valuation, distinguished from category, of suit.
4. Decision by lower Cour, express or implied.
5. Finality of decision re Court-fees.
6. Appeal.
7. Revision.
8. Powers of appellate Court.
9. Reference to High Court.
10. Second appeal.
11. Procedure.
12. Coercive measures and penal consequences.
13. Review.

489. SCOPE OF THE SECTION.—This section is evidently framed for fiscal purposes, calculated to protect and safeguard the interests of the revenue.[34] The scheme of the section is, that under clause one, the decision on the question of Court-fee, by the Court of first instance, is made final between the parties; and, hence that decision cannot be questioned by the defendant at the later stages of the suit, though under Cl. 2, of the section, power is reserved for the Court of appeal to take up the question of Court-fees, in the interests of revenue, and pass necessary orders

(31) 1932 Pat. 228=137 I.C. 855=11 Pat. 532.

(32) 129 I.C. 662.

(33) 5 Pat. 361 (F.B.)=93 I.C. 939 (F.B.)=1926 Pat. 218.

(34) *Pearishah* v. *Surjamal Marwari*, 16 I.C. 575; *Tekana Kavandan* v. *Aligiri Kavandan*, 25 I.C. 506; *Lodli Begam* v. *Ramdas*, 90 I.C. 321=1926 Pat. 488=6 P.L.T. 448.

for the protection of the revenue.[35] This section ensures that even if the question of Court-fee valuation or assessment, is wrongly decided by a subordinate Court, the party concerned cannot appeal if he has been over-assessed, but the Court of appeal is entitled to see that the revenue is not defrauded, and that the proper fee payable to Government as the "price" of the trial of the suit has been paid.[36]

490. APPLICATION OF THE SECTION—(1) Not applicable to original side of High Court.—S. 12, does not apply to the original side of the High Court.[37] It deals with fees in Courts and public offices other than those referred to in Ch. II, *viz.*, other than High Courts, and Courts of Small Causes, at the Presidency Towns, and on appeals therefrom. But it has no application to a question of Court-fees payable on a memorandum of appeal presented to a High Court.[38]

491. (2) Not Applicable to Question of Category of Suits.—It has been repeatedly held by all the Indian High Courts that S. 12 ought to be strictly construed, and that it bars an appeal only where a question of *valuation* of suit for the purpose of determining the amount of Court-fee payable is involved, but that it cannot be applied to bar an appeal where the question raised is one of the class under which the suit falls, and not merely of valuation in that class.[39]

492. Not Applicable to Decided cases.—It was held by Mahmood, J., in *Mahadei* v. *Ram Kishandas*,[40] that S. 12. does not give jurisdiction to a Court to exercise any powers, in connection with a decretal order, after the Court passing it has become *functus officio* by having disposed of the case. The power to recover additional Court-fees, and to require a party to supply the deficiency, is exercisable only antecedently to the final decision of the case, to which the question of the payment of the Court-fees relates. Consequently, an order as to Court-fees passed subsequent to the decree, cannot be dealt with in the decree of Court, though the order may be subject to such rules as to appeal or revision as the law may or may not provide. This view has been followed by the Lower Burma Chief Court, in the case of *Shanghai Life Insurance Coy.* v. *Mrs. Helen Constance Brown*,[41] where it was held that the provisions of the Court-Fees Act regarding the levy of additional Court-fees apply only to pending cases, and cannot be enforced in cases which have been finally decided. Similarly, it has been held by the CALCUTTA HIGH COURT, in *Jatra*

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(35) 25 I.C. 506, *supra*, also 90 I.C. 321=1926 Pat. 488, *supra*.

(36) In re *Lakshmi Ammal*, 91 I.C. 729 (733).

(37) Per Mullick, J., in 4 Pat. 336 (F.B.)=87 I.C. 137 (148) (F.B.)

(38) Per Miller, C. J., in 4 Pat. 336 (F.B.)=87 I.C. 137 (141) (F.B.).

(39) See comments under the heading "Question of Valuation, distinguished from Category of suit", *post*.

(40) 7 All. 528=5 A.W.N. (1885) 140.

(41) 32 I.C. 534 (F.B.).

Mohan Sen v. *Secretary of State*,[42] that where the trial Court after disposal of a suit, recorded an order setting out that the suit had been undervalued, and directed the plaintiff to pay the requisite additional Court-fees, the Court was not competent to realise the amount by attachment of the plaintiff's moveable property. The Patna High Court has held in the Full Bench case of *Radhika Raman Prasad* v. *Janki Kuar*,[43] that once an appeal has been dismissed, the High Court ceases to have seisin of the appeal or case, and is powerless to call upon the respondent to pay any deficiency due by him in respect of Court-fees payable in the lower Court. This has been followed in *Rajdeo Narain Singh* v. *Ramdil Singh*,[44] and, very recently, the Patna High Court has held in *Sideshwari Prosad* v. *Ram Kumar Rai*,[45] that the stamp reporter has power to re-open the question of whether a document is sufficiently stamped, where the matter has not already been decided by the Taxing Officer, so long as the appeal may remain pending. The LAHORE HIGH COURT follows the Allahabad, Calcutta, and Patna view, and it was held in *Abdulla* v. *Secretary of State*,[46] that where the District Judge after dismissing the plaintiff's appeals proceeded to order him to make up a deficiency which he discovered in the Court-fees on the appeals, he had no power to do so, having become *functus officio* when he dismissed the appeals. This view has been followed in the recent case of *Mt. Durga Devi* v. *Mt. Parbati*.[47] The OUDH CHIEF COURT, has, likewise, held that power to compel payment of additional fee can be exercised by appellate Court only before decision of appeal.[48]

493. (4) Not Applicable to Question of jurisdiction.—The decision of a subordinate Court upon the question of its jurisdiction to entertain the suit is not intended to be final under S. 12, of the Court-Fees Act, even if the question of valuation arises incidentally therein.[49] An appellate Court dissenting from the trial Court's valuation, and returning appeal for presentation to proper Court, acts with jurisdiction. An appellate Court is competent to determine if it has jurisdiction to hear the appeal.[50]

494. (5) Not Applicable to Cross-objections.—It was held, by the Allahabad High Court in *Hasan Bano* v. *Nizamuddin*,[1] that S. 12 of the Court-Fees Act is not applicable

(42) 52 I.C. 435=46 Cal. 520.

(43) 51 I.C. 756=(1919) Pat. 276=4 P.L.J. 472 (F.B.).

(44) 58 I.C. 271=5 Pat.L.J. 508.

(45) 1933 Pat. 234=14 P.L.T. 180.

(46) 1925 Lah. 131 (1)=82 I.C. 588.

(47) *Mt. Durga devi* v. *Mt. Parbati*, 1933 Lah. 208.

(48) *Durga Prasad* v. *Surat Singh*, 1929 Oudh 483 (1)=6 O.W.N. 757.

(49) *Brojo Coomar Sen* v. *Eshan Chander Das*, 3 C.L.R. 79; *Peari Shah* v. *Surjamal*, 16 I.C. 575; *Chilkuri Narasimha* v. *Zemindar of Bobilli*, 52 I.C. 1001=1919 M.W.N. 570=10 L.W. 178=26 M.L.T. 153.

(50) *Lalli Begam* v. *Ramdas*, 1925 Pat. 488=98 I.C. 321.

(1) 13 A.W.N. 85.

to the case of cross-objections under O. 41, R. 22, Civil Procedure Code, 1908. In Madras, however, the memorandum of appeal includes a memorandum of cross-objections, and the section would seem to be applicable.[2]

495. QUESTION AS TO VALUATION, DISTINGUISHED FROM CATEGORY OF SUIT.—Under S. 12, it is merely the decision of the subordinate Courts as to *valuation,* that is final. All High Courts are agreed that question as to category in which the suit or appeal falls is not made final under this section.

496. Allahabad.—S. 12, of the Court-Fees Act prohibits appeals on questions relating to *valuation* for the purpose of determining the amount of a fee. But when the question is whether the fee payable is a special and certain fee fixed for all suits of the particular nature no question of valuation arises, and the appeal is entertainable.[3] It was pointed out, in *Balkaran Rai* v. *Gobind Nath Tiwari,*[4] that appeal lies from a decision as to the fundamental question of category, of the relief sought in a plaint or by a memorandum of appeal, as it is not a question relating to valuation, within S. 12 of the Act and similarly, it has been observed in the case of *Wilayat Ali Khan* v. *Umardaraz Ali Khan,*[5] that under S. 12 of Court-Fees Act, the decision of Court of first instance upon a question relating to valuation, not affecting the question of category, is final. But, where a Court has based its decision as to the valuation of a suit upon a wrong construction of an article in the Court-Fees Act, an appeal is not precluded by S. 12 of the Act.[6]

497. Bombay.—The Bombay High Court, held in *Narayan Madhavrao Naik* v. *The Collector of Thana,*[7] that there is no appeal against the order of a District Judge fixing the amount of the Court-fee chargeable on a plaint. However, an appeal would lie from the order rejecting the plaint as insufficiently stamped,[8] and the decision of the subordinate Court may be subject to revision by the High Court;[9] and, the Court may consider whether a Subordinate Court erred in applying a certain section to the case.[10] But, though an appeal lies against a decision as to the class to which a suit belongs, it does not lie against a decision as to the valuation of the suit in that class.[11] This has been followed in the recent case, of *Balkrishna Bhimaji* v. *Ramakrishna Ganadhar,*[12] although some difficulty was experienced in reconciling the decision with certain expressions in the Full Bench case

(2) Satyamurti's Court-Fees Act, p. 258.
(3) *Chunia* v. *Ramdial,* 1 All. 360.
(4) 12 All. 129 (153, 154) F.B., per Edge, C. J.
(5) 19 All. 165=17 A.W.N. (1897) 33.
(6) 28 All. 411=1906 A.W.N. 66=3 A.L.J. 244.
(7) 2 Bom. 145=2 Ind. Jur. 419.
(8) *Sardar Singh Ji* v. *Ganpat Singhji,* 17 Bom. 56=(1892) P.J. 144.
(9) *Vithal Krishna* v. *Balkrishna,* 10 Bom. 610 (F.B.).
(10) *Kashinath Narayan* v. *Govinda Pin Piraji* 15 Bom. 82.
(11) *Dada Bhan Kittur* v. *Nagesh Ramchandra,* 23 Bom. 486.
(12) 1931 Bom. 234=33 Bom.L.R. 263.

of *Vithal Krishna* v. *Balkrishna*.[13] Baker, J., observes that it has been held by practically all High Courts that S. 12, Court-Fees Act, applies merely to the valuation of the property for the purpose of calculating the Court-fee when there is no question as to the schedule of the Act with reference to which the valuation is to be made, and it does not apply to cases in which it is contended that the property has been wrongly valued, and the relief has been improperly estimated by putting it under a wrong article of the schedule in the Act.[14]

498. Calcutta.—It has been held, in some early cases, that the expression "*valuation*" in S. 12, means the valuation of the suit, and the provision of finality in S. 12 (i), attaches to the valuation of the suit, and to the value of the stamp.[15] Accordingly, if any question of valuation of property in dispute is raised by either of the parties, the final decision upon that point is taken as vested in the Court which hears the suit;[16] but S. 12, does not prevent a party from appealing to High Court, and urging that the Court of first instance was wrong as to the particular article of the schedule of fees by which the case was governed.[17] This section does not contemplate a case in which the Court refuses to hear a suit on the ground that a sufficient Court-fee has not been paid.[18] The rule of law was thus stated in the case of *Omrao Mirza* v. *M. Jones*:[19] "S. 12, of the Court-Fees Act applies merely to the valuation of the property for the purpose of calculating the Court-fee, when there is no question as to the article of the schedule of the Act with reference to which the valuation is to be made, and does not apply to a case in which it is contended that the property has been wrongly valued, but that the relief has been improperly estimated by putting it under a wrong article in the schedule of the Act." In that case, as in the case of *H. C. Studd* v. *Mati Mahto*,[20] where this rule was followed, the question was whether the stamp necessary was an *ad valorem* stamp, or a stamp of ten rupees under Art. 17, of Sch. II, of the Act. It was held, therefore, that S. 12 (i) is no bar to an appeal, when the question to be decided by lower Court is merely the class of suit, in order to ascertain under what schedule of the Act it must be taken to fall for the purpose of fixing the Court-fee payable on the point or memorandum of appeal.[21] In the Full Bench case of *Upadhya Thakur* v. *Persidh Singh*, the question was as to Court-fee payable on memorandum of appeal to Sub-Judge in proceedings under the Bengal Tenancy Act, and it was held that the decision did not

(13) 10 Bom. 610 F.B. (F.N. 9, *supra*).

(14) 1931 Bom. 234=33 Bom.L.R. 263 (cites, 12 C.L.R. 148; 1 All. 360; 4 Mad. 204; 14 Mad. 169; 28 Cal. 334; 51 Cal. 216=81 I.C. 763=1924 Cal. 731).

(15) *Rajkristo Banerjee* v. *Bama Soonduree Dassee*, 23 W.R. 296.

(16) *Ooma Sunkur* v. *Munsoor Ali*, 13 W.R. 326.

(17) *Gunga Monee* v. *Gopal Chunder*, 19 W.R. 214.

(18) *Ajoodhya Pershad* v. *Gunga Pershad*, 6 Cal. 249=6 C.L.J. 567.

(19) 10 Cal. 599; 12 C.L.R. 148.

(20) 28 Cal. 334.

(21) *Ibid.* 28 Cal. 334.

dispose of any question of *valuation*, far less of any question relating to valuation of a *suit*, and was therefore not final under the provisions of the Court-Fees Act.[22] The Calcutta view agrees with other High Courts, that S. 12, has no application where the question for decision is as to the class under which a suit falls, and not merely of valuation in that class.[23] It construes the section strictly, as noticed previously, holding that questions relating essentially to jurisdiction of Court to entertain the suit, do not relate to valuation for purpose of determining Court-fee.[24] According to Calcutta High Court, an appeal is competent notwithstanding the provisions of S. 12, of the Court-Fees Act, where the case is not of appraisement of, or fixation of value with a view to determine the amount of fee chargeable; and the dispute involves root questions of principle as to the nature of the suit, and the retrospective operation of statutes.[25]

499. Lahore.—The Punjab Chief Court held in *Pir Mahomed* v. *Ghulam Hyder*,[26] that S. 12, does not prevent the raising in the appellate Court questions involving wider matters than are referred to in that section, although that might concern the determination of the amount of the Stamp-fee. This was relied upon in *Gandamal* v. *Mt. Mehtabo*,[27] for holding that where the question is not merely one relating to valuation, but whether a particular article applies to a suit, the order of the lower Court is not final under S. 12 (i), of the Act. These cases were followed in *Shahalam* v. *Mahmud*,[28] and S. 12, was held to be no bar to appeal, in which the contention was not what was the value of the suit, but rather what was its nature. Similarly, in *Mangal Das* v. *Narnijan Das*,[29] it was said that S. 12, of the Court-Fees Act should be construed as enacting finality only in the matter of the actual assessment of the valuation of the property, and as allowing an appeal to proceed upon all questions of the construction of the Act, whether the contention is as to the section, or clause applicable, or as to the meaning of any particular clause or section. The whole question came up for consideration again, in the Full Bench case of *Mahna Singh* v. *Bahadur Singh*,[30] where it was held by the Full Bench, (1), that the decision of the Court is final, under S. 12, only as regards the actual appraisement of the suit, and the determination of such question as relates directly and immediately thereto, and that the question whether such Court was right or wrong in holding a suit to be one of a particular class does not relate directly or immediately to such appraisement, and is open

(22) 23 Cal. 723, F.B.

(23) *Sundar Mal* v. *Murray*, 16 I.C. 963.

(24) *Peari Shah* v. *Surjamal*, 16 I.C. 575.

(25) *Taraprasanna Chongdar* v. *Nrisinha Murari Pal*, 81 I.C. 763 (766)=39 C.L.J. 212=51 Cal. 216=28 C.W.N. 683=1924 Cal. 731.

(26) 42 P.R. 1874.

(27) 2 P.R. 1889.

(28) 67 P.R. 1878.

(29) 56 P.R. 1895.

(30) 16 P.R. 1919 (F.B.)=49 I.C. 711 (F.B.)=11 P.W.R. 1919 (F.B.).

to challenge on appeal. (2), Accordingly, if the appellate Court holds that a suit has been rightly classified by the Court of first instance, the latter Court's valuation must, of course, be upheld as final; but, if on the other hand, the appellate Court is of opinion that the suit has been wrongly classified, the decision of the lower Court as regards valuation must necessarily be set aside, if such valuation is different from the valuation which would have been placed on the suit if rightly classified. Scott Smith, J., held, that the question of a category to which a suit appertains is an independent question antecedent but not relating to valuation.[31] *Rattigan, C.J.*, observed that S. 12, of the Court-Fees Act is a fiscal enactment almost penal in its character, and it must therefore be construed strictly, and not allowed a wider scope than the strict literal meaning of the words warrants.[32] It was observed by the Chief Judge, and Scott-Smith and Le Rossifuol, JJ., that the question of category is one of law, often involving points of nicety and difficulty, and the legislature could not have intended that the decision of the trying Court on such a point should be final.[33] An order assessing Court-fee is thus not appealable.[34] The same view has been taken by the Lahore High Court in *Mt. Jantan* v. *Ahmad.*[35] S. 12 merely bars an appeal where the dispute is more or less a question of fact, about the proper valuation of the subject-matter of the suit, and not where the question is, which of the several articles of the Court-Fees Act applies to the facts stated in the plaint. "In the second case different considerations arise and the matter, being purely one of law, is capable of being examined by Superior Courts at the instance of either party."[36]

500. Madras.—In the Full Bench case of *Lakshmi Amma* v. *Janama Jayan Nambiar,*[37] it was held that the question as to the category to which a suit or appeal belongs is not a question, the decision of which is made final by S. 12, of the Court-Fees Act. This case proceeded on *Annamalai* v. *J. G. Gloete,*[38] in which it was held that the terms of S. 12, of the Court-Fees Act did not "declare the decision of the Court in which the plaint or appeal is filed final on all questions which may arise respecting the Court-fee but on every question relating to the *valuation* for the purpose of determining the amount of the fee." A similar view was expressed in *Kanaran* v. *Kanappan,*[39] which purported to follow *Chandu* v. *Nombi.*[40] The Full Bench case of *Lakshmi Amma,* has been followed in *Venkata Ramana Iyer* v. *Narayanaswami Iyer,*[41]

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(31) *Ibid.* 16 P.R. 1919 (F.B.) at p. 43.
(32) 16 P.R. 1919 (F.B.) at pp. 47 to 49.
(33) *Ibid.* 16 P.R. 1919 (F.B.) at pp. 43 to 51.
(34) *Ujagar Singh* v. *Sohan Singh,* 105 I.C. 610=26 P.L.R. 163.
(35) 1928 Lah. 221=106 I.C. 817.
(36) *Ibid.* Per Jailal, J., 1928 Lah. 221 (223).
(37) 4 M.L.J. 183 (F.B.).
(38) 4 Mad. 204.
(39) 14 Mad. 169.
(40) 9 Mad. 208.
(41) 87 I.C. 660=1925 Mad. 713=(1925) M.W.N. 276=21 M.L.W. 649=48 M.L.J. 608.

where it was held that if a Court below proceeded on a wrong principle in the levying of Court-fees, the High Court would interfere in revision.[42]

501. Nagpur.—The Nagpur Judicial Commissioner's Court has held in *Govind* v. *Mt. Vithabai*,[43]

> "that S. 12 of the Court-Fees Act only applies tc a decision as to the Valuation of a suit, which falls within a particular class, and not to a decision as to the particular class in which a suit falls, that is to say, if there is no doubt as to the class, in which the suit falls, and the section of the Court-Fees Act, which applies to it, the decision of the First Court as to the valuation, which depends on the value of the property in suit, is final; but if there is a dispute as to the class in which the suit falls, that is to say, the section of the Court-Fees Act which applies to it, an appeal will lie."

502. Oudh.—The *Oudh Judicial Commissioner's Court*, when dealing with the question, which arose in the case of *Mt. Gumani* v. *Banwari*,[44] whether an appeal lies against the order of the lower Court dismissing an appeal for failure of the appellant to pay the Court-fee held due on the memorandum of appeal, observed that the subsequent general enactment in the Civil Procedure Code (S. 54, of the Code of 1882; now, O. 7, R. 11, Civil Procedure Code, 1908), did not affect a prior special enactment in S. 12, of the Court-Fees Act, by implication as held in some cases;[45] however, "nearly all the High Courts have drawn a distinction between a case where the valuation depends merely on a question of fact, and one where it depends on a question of law, declaring that S. 12 does not bar an appeal in the latter case."[46] An appeal was allowed in the case of *Ramphal* v. *Deputy Commissioner, Bahraich*.[47]

503. Patna.—In *Mt. Chandra Mani Koer* v. *Basdeo Narain Singh*,[48] the Patna High Court was dealing with the question as to appeal under the Civil Procedure Code, against the order rejecting a plaint, on failure to comply with an order demanding Court-fees. Case-law was fully reviewed, and the Court came to the following conclusion:—

(1) An order rejecting a plaint under O. 7, R. 11, Civil Procedure Code, is not appealable, when such order is based on

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(42) *T. K. M. Alagappa Chetty* v. *Saminathan Chetty*, 1933 Mad. 367 (1)=142 I.C. 195.

(43) 87 I.C. 911=1925 Nag. 435, follows *Dadabhan Kittur* v. *Nagesh Ramchandra*, 23 Bom. 486.

(44) 54 I.C. 733=22 O.C. 289.

(45) Compare, *Rupsingh* v. *Mukbray Singh*, 7 All. 887=(1885) A.W.N. 260; following the ruling in *Ajoodhya Pershad* v. *Gunga Pershad*, 6 Cal. 249; 6 C.L.R. 567; and followed in *Muhammad Sadik* v. *Muhammad Jair*, 11 All. 91=(1888) A.W.N. 286.

(46) *Mt. Gumani* v. *Banwari*, 54 I.C. 733 (736)=22 O.C. 289, citing *Studd* v. *Mati Mobto*, 28 Cal. 334; *Balkaran Rai* v. *Govind Nath Tiwari*, 12 All. 129 (F.B.); and *Dada* v. *Nagesh*, 23 Bom. 486.

(47) 2 I.C. 600=12 O.C. 130.

(48) 49 I.C. 442=4 P.L.J. 57, followed in *Maini Lal* v. *Durga Prasad*, 80 I.C. 667=3 Pat. 1930=5 P.L.T. 425=1924 Pat. 673.

a question of valuation *pure and simple*: (2) when the order necessarily involves a decision of the category or class under which a suit falls, even though it incidentally decides a question of valuation, the order is appealable. Similarly, it was held in *Mt. Ladli Begum* v. *Ram Das*,[49] that

> "Under the first paragraph of S. 12 of the Court-Fees Act the Valuation made by the trial Court for the purpose of computing the Court-fee is final as between the parties, but the finality so conferred is confined within very narrow limits and it is even open to a party to appeal on a question of category, that is to say, the class within which the suit falls. On a question of valuation, pure and simple, a party cannot appeal, but the Court may act under the second part of S. 12 of the Court-Fees Act for the purpose of protecting the revenue."

In the Full Bench case of *Krishna Mohan Sinha* v. *Raghunandam Pandey*,[50] the whole scheme of the Court-Fees Act was examined by the learned Judges, and the provisions of Ss. 5. and 12, of the Court-Fees Act were compared. It was pointed out that under S. 12, of the Court-Fees Act, a decision on a question of valuation pure and simple is final as between the parties to the suit, but not a question as to category in which the suit or appeal falls, whereas under section 5 the decision of the Taxing Officer is final as to the amount of fee determined by him to be payable upon the memorandum of appeal or other documents filed in the High Court, no matter how he arrives at his conclusion, namely by determining the valuation, or the category.[1]

504. DECISION BY LOWER COURT, EXPRESS OR IMPLIED.—The words "every question relating to valuation....on a plaint.....should be decided by the Court....." do not carry with them the meaning that a distinct question or issue relating to valuation must be raised, and a formal decision thereon passed by the Court of first instance before a Court of appeal can interfere.[2] No plaint can be accepted and registered until the preliminary questions of valuation and sufficiency of stamp have been determined by the Court, and if the Court of appeal considers that the plaint has been admitted "to the detriment of the revenue", the law makes it the duty of a superior or Appellate Court to take action for the protection of the revenue, and to dismiss the suit, if the party in default did not pay in the deficient Court-fee.[3] The Punjab Chief Court has held, in the Full Bench case of *Dayal Singh* v. *Ram Rakha*,[4] that when it is found in appellate Court that the Court-fee paid on a plaint or a memorandum of appeal, as the case may be, in the Court below is insufficient, and no dispute as to the amount has arisen and been specifically decided in such lower Court with reference to S. 12,

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(49) 1925 Pat. 488=90 I.C. 321=6 P.L.T. 448=1925 P.H.C.C. 167.

(50) 87 I.C. 137 (F.B.)=4 Pat. 336 (F.B.)=6 P.L.T. 262=1925 Pat. 392.

(1) 87 I.C. 137 F.B. (145), (148)=4 Pat. 336 (F.B.), *supra*.

(2) *Shama Soondary* v. *Hurro Soondary*, 7 Cal. 348=8 C.L.R. 528.

(3) *Ibid.* 7 Cal. 348 (351, 352)=8 C.L.R. 528.

(4) 109 P.R. 1912 (F.B.)=15 I.C. 463.

of the Court-Fees Act, it must be held, if such lower Court has proceeded to the decision of the suit or appeal, that such Court has decided, under S. 12 (i), of the Court-Fees Act, upon the proper Court-fee to be levied. Consequently, that the provisions of S. 12 (ii), of the Act would apply, and the consequence of the action taken by such superior Court would be as is provided for in S. 10 (ii).[5] A suit comes before a Court of appeal within the meaning of sub-Cl. (*ii*), of S. 12, when the appeal is registered in such Court. And the Appellate Court can take action even without the necessity of a formal decision on the question of sufficiency of the Court-fees in the Court below.[6] The Calcutta view has been relied upon also by the Madras High Court, in *In re Lakshmi Ammal,*[7] where it is held that "when a Court receives a plaint, petition, or any other pleading, and files it as properly stamped, its Act amounts to a decision that the proper Court-fee has been paid." In this connection, if the practice so allows it, the Act of the Chief Ministerial Officer would be taken as an Act of the Court within the meaning of S. 12, Clause (1). This view is further supported by the observations of Carnduff, J., in *Surendra Nath* v. *Sitanath Das,*[8] where although there was no express decision that the fee paid was sufficient, such a decision was implied by the action of the Court in receiving the appliction, and passing any order upon the prayer contained in it. The ALLAHABAD HIGH COURT, held in the case of *Wilayat Ali Khan* v. *Umasdaraz Ali Khan*[9] that where no objection as to valuation of suit had been taken in the Court of first instance, and the point was sought to be first raised after the remand by the High Court, the Court must be deemed to have decided the question adversely to the party who subsequently sought to raise it. This view is to be compared with the view of the Full Bench of the same Court in the case of *Amjad Ali* v. *Muhammad Israil.*[10] A decision to be "final as between the parties" must be a judicial decision upon a hearing in which the general judicial maxim of "*Andi Alteram Partem,*" has been observed. A decision based upon the *ex parte* report of a *massarim,* before the plaint or memorandum of appeal is filed, cannot be intended to have the status of finality conferred upon it. Consequently, where subsequently a decision is passed by the Court after the parties have appeared and argued the question, the latter decision is the one which would be final as between the parties within the meaning of S. 12, of the Court-Fees Act.[11]

505. **FINALITY OF DECISION RE COURT-FEES—Ss. 5, and 12, compared.**—It was observed by Sir John Edge, C.J., in the Allahabad Full Bench case of *Balkaran Rai* v. *Gobind Nath*

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(5) 109 P.R. 1912 (F.B.)=15 I.C. 463.
(6) *Ibid.* followed, 7 Cal. 348=8 C.L.R. 528.
(7) 91 I.C. 729=1926 Mad. 96=49 M.L.J. 108=1925 M.W.N. 826.
(8) 21 I.C. 943 (944).
(9) 19 All. 165=17 A.W.N. (1897), 33.
(10) 20 All. 11 (F.B.)=17 A.W.N. (1897), 157.
(11) 20 All. 11 (F.B.)=17 A.W.N. (1897), 157.

Tewari,[12] that the term "*final*" in S. 5, Court-Fees Act has precisely the same meaning as the term "*final*" in S. 12, of the Act. The subject to which the term is applied in the two sections is, however, different. "In S. 5, it is applied to a decision as to the necessity of paying a fee or the amount thereof, whereas in S. 12, it is applied to a decision as to every question relating to valuation: for the purpose of determining the amount of any fee chargeable under the Chapter (*iii*), on a plaint or memorandum of appeal." To the same effect, is the remark by Sir Jwala Prasad, J., in the Patna Full Bench case of *Krishna Mohan Sinha* v. *Raghunandan Pandey*,[13] that the language of S. 12, is different from that of S. 5.

"Under S. 12 it is merely the decision of the Subordinate Courts as to valuation, and not as to the category in which the suit or appeal falls which is final, whereas under S. 5 the decision of the Taxing officer is final as to the amount of fee determined by him to be payable upon the memorandum of appeal or other documents filed in the High Court: no matter how he arrives at his conclusion, namely, by determining the valuation or the category."[14]

A decision, decree or order cannot be described as final if it is appealable, or so long as it is appealable, and it must be assumed that the Legislature in using the term "*final*" *in* Ss. 5, and 12, used it in the legal sense in which that term is always used in Acts and codes.[15]

506. APPEAL—(1) General Observations.—It has been noticed above that the section is very strictly construed to make its scope of finality as narrow as possible. The High Courts are agreed that questions as to valuation of suit, pure and simple, may be decided finally by the Court, but that question as to category of suit are open to appeal: Again, that the decision of a Court as to its jurisdiction to entertain a suit, is open to interference, on appeal or revision, though it may involve a determination of valuation of suit incidentally. It is now to be noted that the scope of finality under S. 12, Cl. 1, is narrower still, inasmuch as under the Civil Procedure Code, order of Court rejecting a plaint, for non-compliance with an order to make up deficiency in Court-fee are open to appeal as a decree, and a plaintiff can urge against such rejection in his grounds of appeal. Similarly, if a suit is dismissed, under S. 12 (ii), the plaintiff can appeal against the decree dismissing his suit for non-payment of additional Court-fee demanded within the time allowed by Court. The finality is only as between the parties to the suit.

507. (2) Appeal from Order of Rejection of Plaint, or Memorandum of Appeal.—It has been fully discussed in the comments under S. 6, *ante*, that when a plaint is filed on insufficient stamp, the Court is bound to give an opportunity for deficiency to be made good under O. 7, R. 11, Civil Procedure Code, and the plaint cannot be rejected until plaintiff

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(12) 12 All. 129 F.B. (155).
(13) 4 Pat. 336 (F.B.)=87 I.C. 137 (145) F.B.=1925 Pat. 392.
(14) *Ibid.*
(15) 12 All. 129 (155) F.B.

fails to do so, within the time fixed, which may be enlarged from time to time under S. 148, Civil Procedure Code. Similarly as regards a memorandum of appeal, with this difference, that in case of appeals, according to the view of majority of High Courts, there is no right to demand further time to make up deficient stamp. If the order as to payment of additional Court-fee is not complied with, the plaint will be *rejected*, under O. 7, R. 11, Civil Procedure Code, though the expression used in S. 10 (ii), of the Court-Fees Act is that the suit shall be *dismissed*. It has been previously noticed that this dismissal does not amount to *res judicata*, and is practically equivalent to a rejection of plaint. The order rejecting a plaint is now included in the definition of a "decree" (S. 2, Cl. 2, Civil Procedure Code); and is appealable as a decree, just as the order dismissing a suit. The Civil Procedure Code, now gives a right of appeal against the order rejecting a plaint,[16] and as one of the grounds for rejection may be the fact of non-compliance of the Court's order directing payment of additional Court-fee, the decision as to valuation of suit for purposes of Court-fee becomes open to question, in the Appellate Court, while it has been declared *final* under S. 12, Cl. 1, of the Court-Fees Act. The Calcutta High Court took the view in *Ajoodhya Pershad* v. *Gunga Pershad*[17] that the finality declared by S. 12, Court-Fees Act, was removed by the Civil Procedure Code of 1882, inasmuch as, under the already amended definition of the word "decree", an appeal lay against an order rejecting a plaint—S. 54 (*b*), and S. 2, of the Code of 1882, corresponding to O. 7, R. 11, of the Civil Procedure Code of 1908. In a later case of *Prokash Chandra Sarkar* v. *Bishambar Nath Sahi*,[18] where the Court in which a suit was instituted held that it had been undervalued and directed the plaintiff to pay additional Court-fee by a certain date, but the plaintiff having failed to do so, the suit was dismissed, the Calcutta High Court held that an appeal lay against the decree dismissing the suit, and in that appeal the decision of the first Court regarding the valuation of suit could be questioned, S. 12, of the Court-Fees Act notwithstanding. This decision was supported by reference to two rulings of the same Court, *viz.*, in the matter of *Omrao Mirza* v. *Mary Jones*[19] and *Studd, H. C.* v. *Mati Mahto*,[20] in which the case was dismissed, instead of the plaint being rejected, but the point decided was that an appeal lay notwithstanding S. 12, of the Court-Fees Act. The ALLAHABAD High Court, in the Full Bench decision of *Muhammad Sadik* v. *Muhammad Jair*,[21] held that in a case which was virtually one of

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(16) *Mt. Sada Kaur* v. *Buta Singh*, 25 I.C. 565. (*Held*, that the order rejecting the plaint is a decree, under S. 2 (2), Civil Procedure Code, and appealable, by virtue of S. 96 (1), Civil Procedure Code, and that S. 12, Court-Fees Act does not bar an appeal against the order *rejecting the plaint*).

(17) 6 Cal. 249=6 C.L.R. 567.

(18) 5 I.C. 18=14 C.W.N. 343.

(19) 12 C.L.R. 148.

(20) 28 Cal. 334.

(21) 11 All. 91 (F.B.)=A.W.N. (1888) 286.

rejection of a plaint, under S. 54 Civil Procedure Code of 1882, the order passed was a *decree,* and so it was appealable notwithstanding S. 12, of the Court-Fees Act. Their Lordships observed that "in our opinion the intention of the framers of the Civil Procedure Code, was that there should be an appeal in every case falling within S. 54." The ALLAHABAD Full Bench in *Balkaran Rai* v. *Govind Nath*,[22] however, laid down the proposition that, notwithstanding that an order rejecting a plaint or dismissing a suit may be a decree, and so appealable under the Civil Procedure Code, no question as to valuation of suit in the strict sense of the term can, in the face of S. 12, Court-Fees Act, be agitated in the appeal against such order. The PATNA HIGH COURT took the same view in *Mt. Chandramani Koer* v. *Basdeo Narain Singh*,[23] where it was held, that an order rejecting a plaint under O. 7, R. 11, of the Civil Procedure Code is not appealable when such order is based on a question of valuation *pure and simple*, but the order is appealable when it involves, necessarily, a decision of the category or class under which a suit falls, even though it incidentally decides a question of valuation. In *Mt. Sada Kaur* v. *Buta Singh*,[24] the PUNJAB CHIEF COURT, had held that the order rejecting a plaint was not open to revision, being appealable, but it did not pronounce upon the conflict of view noticed as to the scope of appeal under Civil Procedure Code, O. 7. R. 11, in view of the provisions in S. 12, of the Court-Fees Act. But, in *Chuni Lal* v. *Roshanlal,* the view is definitely stated as follows. The Court will not interfere on revision with an order calling on the plaintiff to make up Court-fee on his plaint.

> "It is for plaintiff to make up his mind whether he will comply with the Court's order or not. If he does not comply, then his plaint will be rejected. Then, unless it is a case of the first Court's order as to the amount of stamp required being final, by virtue of S. 12 of the Court-Fees Act, the plaintiff will have a right of appeal."[25]

In *Gumani* v. *Banwaree*,[26] the OUDH JUDICIAL COMMISSIONER'S COURT, has pointed out that the rulings of the Calcutta High Court, in *Ajoodhya Pershad* v. *Gunga Pershad*[27] and of the Allahabad Full Bench in *Muhammad Sadik* v. *Muhammad Jan*,[28] which had been relied upon in support of the proposition that the Civil Procedure Code, by providing for an appeal where a plaint or memorandum of appeal was rejected, must be deemed to override S. 12, of the Court-Fees Act, "appeared to ignore the well-known rule that a subsequent general enactment, does not affect a

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(22) 12 All. 129 (F.B.)=(1890) A.W.N. 39.

(23) 49 I.C. 442=4 P.L.J. 57. Followed in *Main Lal* v. *Durga Prasad,* 80 I.C. 667=1924 Pat. 673=5 P.L.T. 425=3 Pat. 930.

(24) 25 I.C. 565=80 P.R. 1914=265 P.L.R. 1914=167 P.W.R. 1914.

(25) 53 I.C. 427=120 P.R. 1919.

(26) 54 I.C. 733=22 O.C. 289.

(27) 6 Cal. 249=6 C.L.R. 567 (F.N. 17, *supra*).

(28) 11 All 91=A.W.N. (1888) (F.N. 21, *supra*).

prior special enactment by implication.''[29] But, it noted that nearly all the High Courts have, however, drawn a distinction between a case where the valuation depends merely on a question of fact and one where it depends on a question of law, declaring that S. 12 does not bar an appeal in the latter case.[30] The view of law may, therefore, be correctly summed up thus:—An order rejecting a plaint is a decree as defined in S. 2, sub-S. 2, Civil Procedure Code, and hence is appealable as such.[31] But, in cases coming under O. 7, R. 11 (*b*), if the order is based merely upon a valuation of the subject-matter of the suit, and the only question involved is as to the *amount* upon which the Court-fee has to be paid, the decision of the first Court is final under S. 12, of the Court-Fees Act. Where, however, the question is, what provision of the Court-Fees Act, applies to the relief sought for in the plaint or under what category the suit falls, the decision is not final under that section and an appeal is not barred.[32]

508. **REVISION**.—There is a conflict of view on the question whether an order of subordinate Court demanding additional Court-fee under S. 12, Cl. 1, of the Court-Fees Act is final in the sense, that it is not open to interference by the High Court, in the exercise of its powers of revision under the Civil Procedure Code, or under its powers of Superintendence under the letters patent. There is also some difference of opiuion on the question whether an order rejecting a plaint, for non-compliance with a Court's order to pay additional Court-fee within the time allowed, is open to revision, and if so, under what circumstances. The view of the different High Courts on these points may now be noticed in some detail.[33]

509. **Allahabad**.—In *Lakshmi Narain Rai's* case, the ALLAHABAD High Court, did not accept the contention that the order of a subordinate Court directing the payment of additional Court-fee is merely an interlocutory order, no case having been decided within the meaning of S. 115, Civil Procedure Code; and that the plaintiff's proper course was to wait for the dismissal of

(29) *Seward* v. *Veera Cruz*, (1814) 10 App. Cas. 59 at p. 68, cited in 54 I.C. 733=22 O.C. 289. Also see and *Cf. Vithal Krishna* v. *Balkrishna*, 10 Bom. 610, F.B. (Decision by a Court on a question of Valuation, not appealable but open to revision).

(30) 54 I.C. 733=22 O.C. 289.

(31) See *Chitale's*, Civil Procedure Code, Vol. II, p. 1508, citing 115 I.C. 368=1929 Cal. 226; 1921 Lah. 43=67 I.C. 901; 1929 Lah. 83=108 I.C. 597; 39 I.C. 791=1 Pat.L.W. 499; 1923 Pat. 354=4 P.L.T. 261=72 I.C. 629=2 Pat. 504, also 87 I.C. 657=1926 Cal. 427; *Cf.* 5 I.C. 371 (order of rejection by a Court acting under Agra Tenancy Act is not a decree under S. 177 of that Act).

(32) See *Chitale's* Civil Procedure Code, p. 1508, citing 1 All. 360; 10 Bom. 610 (F.B.); 23 Bom. 486 (488); 17 Bom. 56 (59); 15 Bom. 82 (83); 28 Cal. 334 (338); 6 Cal. 249 (250); 13 Cal. 189 (191); 5 I. C. 18 (19); 12 C.L.R. 140 (151); 4 M.L.J. 183 (188); 14 Mad. 169 (170); 4 Mad. 204; 1924 Pat. 673=80 I.C. 667; 49 I.C. 442 (449)=4 P.L.J. 57; 25 I.C. 565=80 P.R. 1914; 54 I.C. 733 (736)=22 O.C. 289; 16 I.C. 773=6 S.L.R. 72; also (1894) B.P.J. 425; 12 All. 129 F.B. *Cf.* 11 All. 91 (F.B.).

(33) **1933 All. 350.**

the suit by disobeying the order and then move the High Court by way of appeal. It was observed that the determination of the question whether an additional Court-fee should be paid or not, marks the termination of a definite stage of the suit and settles the controversy between the parties on the particular point. An order demanding additional Court-fee is an order deciding a case, and amounts to a failure to exercise a jurisdiction vested in that Court.

510. Bombay.—A Full Bench of the Bombay High Court has held, in the case *Vithal Krishna* v. *Balkrishna Janardan*,[34] "that on the question of whether or not any particular suit was one admitting of valuation by the Judge an appeal lies against his decision; but that once it is found that a valuation made by him was within his proper functions, his decision and the several essential elements of it are conclusive as between the parties, and not subject to examination in appeal."[35] "A decision by a subordinate Court on a question of valuation for determining the amount of a Court-fee is, notwithstanding its declared finality, subject to revision by the High Court under S. 622, of the Civil Procedure Code, 1882 (corresponding to S. 115, Civil Procedure Code, 1908) and Regulation II, S. 5, of 1827, in the particular cases pointed out in *Shiva Nathji* v. *Jama Kashinath*."[36]

511. Calcutta.—The Calcutta High Court has not taken a consistent view on the question. In the case of *Ramrup Das* v. *Mohunt Sitaramdas*,[37] it was held that the High Court can interfere with an interlocutory order demanding additional Court-fee, as it appears to be a denial of jurisdiction, *i.e.*, amounts to declining to entertain jurisdiction unless certain things are done; and, that it would be useless to defer the matter until the plaintiff had, by neglecting to take any further steps in the matter, incurred the rejection of his plaint. A modified view was taken in *The Collector of Maldah* v. *Nirod Kamini Debya*,[38] and in *Sunderlal v. J. C. Murray*.[39] It was held that where the Court makes an erroneous decision as to the class of suit, S. 12 of the Court-Fees Act has no application, and the order passed by the subordinate Court, if not revisable under S. 115, Civil Procedure Code, is at least open to interference under S. 15, of the Charter Act. But the view taken in *Falkner* v. *Mirza Muhammad*,[40] draws a distinction between orders favourable and unfavourable to plaintiff; and holds that the order of subordinate Court determining valuation according to its judgment, or holding that the valuation put by plaintiff on the relief is correct, is not open to revision under S. 115, Civil Procedure Code. In *Gobindu Das Nath* v. *Nitya Kalidasi*

(34) 10 Bom. 610 (F.B.).
(35) *Ibid.*
(36) 7 Bom. 341, cited in 10 Bom. 610 (F.B.). (This deals mainly with the special powers of the High Court under its Letters Patent).
(37) 7 I.C. 92=12 C.L.J. 211=14 C.W.N. 932.
(38) 15 I.C. 621=17 C.W.N. 21.
(39) 16 I.C. 963=16 C.L.J. 375.
(40) 29 C.W.N. 327=1925 Cal. 814=86 I.C. 853.

the Calcutta High Court held that an order under S. 149, Civil Procedure Code, requiring the plaintiff to pay additional Court-fee is not open to revision under S. 115, Civil Procedure Code, inasmuch as there is another remedy available to the plaintiff, *viz.*, in case of dismissal of his suit for non-payment of the additional Court-fee, he has a right of appeal.[41] An order rejecting a plaint being a decree and appealable as such, a revision against such order is incompetent.[42]

512. Lahore.—In the case of *Mt. Sada Kaur* v. *Buta Singh*,[43] the PUNJAB CHIEF COURT, held that the order rejecting a plaint, which was not objected to on any ground connected with the valuation of suit, but on the ground that sufficient time was not allowed for payment of additional Court-fee, was appealable as a decree, and this finding barred the remedy by revision. A similar view was taken by the LAHORE HIGH COURT, in *Mt. Azim Bibi* v. *Mt. Intiaz Begam*,[44] where a plaint was rejected upon refusal of the plaintiff to amend the valuation, and pay additional Court-fee, and plaintiff filed a revision against the order refusing to allow him to continue the suit in *forma pauperis*. It was held that the order disallowing the plaintiff's application to continue the suit *in forma pauperis* had become merged in the order rejecting the plaint, and that the latter order was appealable as a decree, and the application for revision was not maintainable. "Remedy by revision is an exceptional remedy and is to be resorted to only when there is no other remedy available to the aggrieved party." In *Chuni Lal* v. *Roshan Lal*,[45] the Punjab Chief Court said that a decision which is declared by law to be final should not be attacked in revision any more than in appeal. Where an order calls on plaintiff to make up Court-fee on his plaint, it is for plaintiff to make up his mind whether he will comply with the Court's order or not. If he does not comply, then his plaint will be rejected; and plaintiff will have a right of appeal, unless it is a case of the first Court's order as to the amount of stamp required being final by virtue of S. 12, of the Court-Fees Act. In *Muhammad Shafi Muhammad Ayab* v. *Delhi House, of Multan*,[46] the Lahore High Court held that the powers of revision vested in the High Court under S. 25, of Provincial Small Cause Courts Act are wider than those under Civil Procedure Code, S. 115, and revision lies from an order wrongly dismissing a suit as time-barred, where Court-fee

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(41) 51 I.C. 581.

(42) *Ramgopal Sanyal* v. *Narendra Nath*, 1929 Cal. 226=115 I.C. 368.

(43) 80 P.R. 1914=25 I.C. 565=265 P.L.R. 1914=167 P.W.R. 1914.

(44) 78 I.C. 604=1925 Lah. 191. *Compare Sher Singh* v. *Pola*, 112 I.C. 490=1929 Lah. 125. (Plaint rejected, after refusing to extend time for payment of requisite Court-fee stamp. The appeal was from order rejecting the plaint, in which the order refusing to grant an extension of time was objected as one of grounds of appeal).

(45) 53 I.C. 427=120 P.R. 1919.

(46) 1928 Lah. 274.

stamps were not available in treasury on the day of presentation of plaint, and hence Court-fee was paid late. The Rangoon High Court follows the view of Punjab Chief Court.[47]

513. Madras (1)—REVISION LIES.—The Madras High Court followed the view of Calcutta High Court in *Ramrup Das* v. *Mohunt Surjanram Das*,[48] in the Madras case of *Dodda Sannekappa* v. *Sakravva*,[49] and held that an erroneous order for payment of deficient Court-fee is open to interference in revision as a failure to exercise jurisdiction. This view had been also taken in *Kanaran* v. *Komappan*,[50] where an order of subordinate Court for payment of additional Court-fee was not a decision involving merely a question of amount or arithmetical calculation, and S. 12 (i), did not apply. Again, in *Sudalaimuthu Pillai* v. *Peria Sundaram*,[1] the Calcutta ruling was followed, and it was held that where the trial Court wrongly directs a higher fee to be paid on a plaint, it is competent for the High Court to interfere in revision under S. 115, Civil Procedure Code, even though a remedy by way of appeal is open. In *Karupanna Thevar* v. *Angammal*[2] Venkatasubba Rao, J., followed the decisions in *Dodda Sannekappa* v. *Sakravva*,[3] and *Ramrup Das* v. *Mohunt Surjanram Das* above referred to, holding that the High Court could interfere in revision. In *Venkataramani Iyer* v. *Narayanswami Iyer*,[5] a view similar to the above was taken by Venkatasubba Rao, J. Walsh, J., held in *Alagappa Chetty* v. *Saminathan Chetty*, that where the lower Court applied wrong principle in question of Court-fees, though in exercise of jurisdiction vested in it, the High Court can interfere in revision.[6]

514. (2) NO REVISION.—But, in *Acha* v. *Sankaran*,[7] the Court refused to interfere with an interlocutory order directing the plaintiff to pay additional Court-fee. It distinguished the ruling in *Sudalaimuthu Pillai* v. *Sudalaimuthu Pillai*,[8] where a conditional order in appeal declaring that the appeal will be dismissed, if a

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(47) *Ma E* v. *Ma E*, 86 I.C. 509=1925 Rang. 199. (*Held*, that an interlocutory order, to amend the plaint was not a complete order which the plaintiff could move the High Court in revision and that an appeal would lie from the complete order rejecting a plaint), follows *Nawab* v. *Duni Chand*, 16 I.C. 475=69 P.R. 1912=202 P.W.R. 1912=212 P. L.R. 1912.

(48) 7 I.C. 92=14 C.W.N. 932=12 C.L.J. 211.

(49) 36 I.C. 831.

(50) 14 Mad. 169.

(1) 87 I.C. 25=1925 Mad. 722=48 M.L.J. 514=1925 M.W.N. 104, also see 71 I.C. 173=17 L.W. 623=1923 Mad. 270.

(2) 96 I.C. 129=23 L.W. 581=1926 Mad. 678=51 M.L.J. 67.

(3) 36 I.C. 831, *supra*.

(4) 7 I.C. 92=14 C.W.N. 932=12 C.L.J. 211.

(5) 87 I.C. 660=48 M.L.J. 688=1925 M.W.N. 276=21 L.W. 649 =1925 Mad. 713.

(6) 1933 Mad. 367 (1)=142 I.C. 195.

(7) 95 I.C. 424=50 M.L.J. 497=1926 M.W.N. 444=23 L.W. 752 =1926 Mad. 768.

(8) 71 I.C. 173=17 L.W. 623=(1922) M.W.N. 831=1923 Mad. 270.

certain amount of Court-fee is not paid within a fixed time, was held to be the decision of a "case" within the meaning of S. 115, Civil Procedure Code, on the ground that it was coupled with an order dismissing the appeal in case of default. The view of Philips, J., in *Acha* v. *Sankaran*,[9] prefers to follow the decision of the Patna High Court *Lachmibati Kumari* v. *Nandkumar Singh*,[10] (which view Krishnan, J., was not inclined to follow), and the decision of the Calcutta High Court in *Gobindu Das Nath* v. *Nityakali Dasi*.[11] Waller, J., in *Chinnasami Pillai* v. *Pavayee Ammal*[12] has followed the decision of Philips, J., in *Acha* v. *Sankaran*,[13] on the ground that the petitioner has other remedies open to him, and that it is no answer to say that the appropriate remedy was more cumbrous: and Curgenven, J., has followed it in *Kotilingam Mudaliar* v. *Board of Commissioners*,[14] on the ground that an order of the lower Court assessing the Court-fee payable upon a petition and allowing the petitioners certain time within which to pay it, does not decide a "case" within S. 115, and is not revisable, unless the Court on failure to make the payment dismissed the petition.

515. **(3)** MODIFIED VIEWS.—But the view of Waller, J., is not shared in *Kulandai Pandichi* v. *Indram Ramaswami*,[15] where it was observed that

> "it seems to us that while Courts would not generally interfere in revision where an equally efficacious remedy is open to the party, they have in several cases interfered where the remedy by way of appeal would entail unnecessary hardship on the party, involve multiplicity of proceedings or would not give the party as complete and efficacious relief as interference with an interlocutory order and the case satisfied the requirements of S. 115, Civil Procedure Code."

A modified view was taken by Venkatasubba Rao, J., in *Mahomed Illiyas* v. *Rahima Bee*,[16] following his own decision in *Karuppanna* v. *Angammal*,[17] and *Venkataramani* v. *Narayanaswami*.[18] He also cites the view adopted by Sastri and Wallace, JJ., in *Kulandai Pandichi* v. *Ramaswami Pandia*[19] in support of the proposition that "where in regard to the Court-fee payable, the decision of the lower Court is unfavourable to the plaintiff," the High Court can interfere with that decision in revision; but, "where an order in regard to Court-fee happens to be in favour of the plaintiff, it does not mean that it is against the

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(9) 95 I.C. 424=50 M.L.J. 497=1926 Mad. 768, *supra*.
(10) 56 I.C. 649=5 P.L.J. 400=1 P.L.T. 268.
(11) 51 I.C. 581.
(12) 1927 Mad. 1162=102 I.C. 877.
(13) 95 I.C. 424=1926 Mad. 768=50 M.L.J. 497.
(14) 1927 Mad. 1021 (2)=39 M.L.T. 220=104 I.C. 145.
(15) 108 I.C. 539=27 L.W. 286=1928 Mad. 416=51 Mad. 664 =55M.L.J. 345.
(16) 1929 Mad. 191=29 M.L.W. 42=56 M.L.J. 302=114 I.C. 842.
(17) 1926 Mad. 768=50 M.L.J. 497=95 I.C. 424.
(18) 1925 Mad. 713=87 I.C. 660=48 M.L.J. 688.
(19) 1928 Mad. 416=51 Mad. 664.

defendant though it may operate to the detriment of the revenue.'' In the former case, the order may result in great hardship to the plaintiff, and the interests of justice may demand that the High Court should at once rectify the error without waiting till the suit is finally decided, and an appeal is then filed. But, if the lower Court's order which is favourable to the plaintiff happens to be wrong, there is another remedy open, which is quite adequate, as the mistake can be corrected by the appellate Court under S. 12, Court-Fees Act.[20] The same view was taken, in *Kattiya Pillai* v. *Ramaswamia Pillai*,[21] (Venkatasubba Row and Reilly, JJ.,), that order relating to a question of Court-fee cannot be interfered with in revision if it is favourable to the plaintiff, and is the only ground of revision. And these cases are relied on, in *Secretary of State* v. *Raghunathan*[22] for the view that in cases in which the trial Courts wrongly order payment of Court-fee over and above what was paid on the plaint, the High Court will interfere in revision, without leaving the aggrieved party to the cumbrous remedy of filing an appeal after the plaint is rejected for non-payment of the amount directed to be paid, the question really being one of jurisdiction as the plaint has to be rejected if the stamp duty is not paid. But, there is no authority for the view that the High Court will exercise its revisional powers where a favourable decision has been given as regards Court-fee to the plaintiff.[23]

516. Nagpur.—The Nagpur Judicial Commissioner's Court holds the view that revision will lie against an order demanding additional Court-fee,[24] and that the plaintiff was unwise in following the usual course of allowing his plaint to be rejected, and appealing against the order of rejection.

517. Patna.—In *Banke Behari* v. *Ram Bahadur*,[25] the Patna High Court observed that the regular procedure may be that the plaint should in the first instance be rejected by reason of the default of payment of the Court-fees ordered by the Court; ''but this Court has, as a matter of fact, interfered in interlocutory matters like the present on former occasions''; and that where the record of the case has been sent by the High Court and there appears on the record an obvious error, the High Court should dispose of the matter even at an interlocutory stage, and thus save

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(20) See *Falkner* v. *Mirza Mahamed Syed Ali*, 1925 Cal. 814, where the difference between a case where the order is in favour of the plaintiff, and where it is against him, is pointed out, and the view is expressed that whereas a Civil revision petition lies in the latter case, it does not in the former.

(21) 1929 Mad. 396=56 M.L.J. 394=29 M.L.W. 584=(1929) M. W.N. 286=199 I.C. 35.

(22) 1933 Mad. 506.

(23) 1933 Mad. 506 (cites 1929 Mad. 191; 1929 Mad. 396, and 1925 Cal. 814); *cf.* 1928 Mad. 416 and 1925 Mad. 722.

(24) *Harihar Rao* v. *Satu Bai*, 1927 Nag. 256.

(25) 44 I.C. 891=4 P.L.W. 281=(1918) Pat. 223=4 P.L.J. 191, also see *Nauratanlal* v. *W. J. Stephenson*, 50 I.C. 470=4 P.L.J. 195. (*Held*, that the High Court has power to interfere in revision with interlocutory orders of lower Courts).

the parties to the litigation unnecessary expense, and undue delay.'' But, in *Bhubaneshwari Prasad* v. *Mohan Lal*,[26] having regard to the decision in *Chandramani Koer* v. *Basdeo Narain Singh*[27] that an appeal will lie against an order made rejecting the plaint in the case, the High Court refused to interfere, under S. 115, Civil Procedure Code, with an interlocutory order, when there was another course open, and no irremediable harm could be suffered by the petitioner. This view was agreed to in an exactly similar case, by another Bench of the same High Court, in *Lachmibati* v. *Nandkumar Singh*,[28] And, the whole case-law has been fully reviewed by Jwala Prasad, J., in *Mani Lal* v. *Durga Prasad*,[29] where the learned Judge arrives at the following conclusions:—

> ''That the principle is that ordinarily an interlocutory order is not capable of revision particularly when there is another remedy available to the injured party; but where the order complained against is such as is calculated to cause irreparable loss to the injured party and there is no right of appeal and no remedy available to the party, an interlocutory order may be revised under S. 115 of the Civil Procedure Code, read with S. 15 of the Charter Act. ((S. 107 of the Government of India Act) These are the tests laid down on a review of authorities both English and Indian in the case of *Amjad Ali* v. *Ali Hussain Johar*,[30] as also in the case of *Chandramani Koer* v. *Basdeo Narain Singh*.[31] The question whether an order directing additional Court-fee to be paid satisfies the aforesaid tests depends upon the circumstances of each case. If it is an order merely assessing valuation of the property and the only question involved is as to the amount upon which the Court-fee has to be paid, the decision of the Court of first instance would appear to be final under S. 12, of the Court-Fees Act.''[32]
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> ''That section has been enacted in the interest of revenue, and the order is final so far as that Court is concerned. There will be no appeal or revision from that order. But the question may under certain circumstances be raised in an appeal from the final decree made in the suit. Where however, the question is under what provision of the Court-Fees Act the relief sought for in the plaint comes or under what category the suit falls, the decision of the first Court is not final;[33] and where it involves the jurisdiction of the Court to try the suit the decision involves a question of jurisdiction, and a wrong decision on the point would amount to an assumption of jurisdiction not vested in law, or a failure to exercise the jurisdiction vested in law.''
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> ''An order demanding an improper Court-fee involving jurisdiction of the Court to try or not to try the suit though an interlocutory order fulfils the tests laid down above and will attract the revisional jurisdiction of the Court under S. 115 of the Civil Procedure Code and S. 107 of the Government of India Act. To deny the power of revision in such cases

(26) 55 I.C. 786=1 P.L.T. 5.

(27) 49 I.C. 442=4 P.L.T. 57. (*Held*, that an order rejecting a plaint, when involving a question of jurisdiction, may be interfered with in Revision, either under S. 115, Civil Procedure Code, or under S. 107 of the Government of India Act).

(28) 56 I.C. 649=1 P.L.T. 268=5 P.L.J. 400.

(29) 80 I.C. 667=5 P.L.T. 425=(1924) Pat. 254=3 Pat. 930 =1924 Pat. 673.

(30) 6 I.C. 574=15 C.W.N. 353=12 C.L.J. 519.

(31) 49 I.C. 442=4 P.L.J. 57.

(32) 80 I.C. 667=3 Pat. 930, *supra*.

(33) 80 I.C. 667 (670), *supra*, citing *Dada Bhau* v. *Nagesh Ramchandra*, 23 Bom. 486; *Studd* v. *Mati Mahto*, 28 Cal. 334; *Kanaran* v. *Komappan*, 14 Mad. 169; *Chunia* v. *Ramdial*, 1 All. 360.

will be to allow the subordinate Courts to pass whimsical orders and thereby refuse to try the suit and exercise jurisdiction and there might be no remedy available to the plaintiff as was pointed out by their Lordships of the Judical Committee in the case of *Balkrishna Udayar* v. *Vasudeva Aiyar.*''[34]

The decision of matters relating to Court-fees will be decision of a ''case'' within the meaning of the word in S. 115, of the Code.[35] In the case of *Maharaj Bahadur Singh* v. *Prithichand Lal*, Fazl Ali, J., has reviewed the case-law and the conclusion stated is as follows:

''That although the High Court might be competent to interfere with an erroneous decision of a subordinate Court directing the plaintiff to pay additional Court-fee such an order will be revised by the High Court only in exceptional cases, particularly when there is no other remedy available to the injured party, and when the order complained against is such as is calculated to cause irreparable loss to such a party: or when the order is manifestly wrong or perverse and amounts to a denial of jurisdiction.''[36]

In *Sham Narain Singh* v. *Basudeo Prasad Singh*,[37] (Wort and Kulwant Sahay, JJ.,), have followed the decision in *Bhuneshwari* v. *Mohanlal* and it has been held that the High Court will not interfere in revision with an order demanding additional Court-fee from a plaintiff, since he has another and proper remedy open to him by way of appeal on rejection of plaint and further that S. 107, of the Government of India Act does not give wider powers to High Court, and this view has been followed in the case of *Jogendra Narain Singh* v. *Radha Prasad Singh*,[38] holding that a revisional application against the decision of the subordinate Judge deciding an issue as regards Court-fees does not lie to the High Court.

518. Summary.—THE ALLAHABAD High Court, holds that the order directing payment of additional Court-fee is the decision of a ''case'', open to revision under S. 115, Civil Procedure Code.[39] The BOMBAY Full Bench holds that revision lies under S. 115, Civil Procedure Code, under circumstances mentioned in Letters Patent.[40] The CALCUTTA view favours power of interference on revision,[41] especially when the erroneous decision is as to class of suit,[42] and unfavourable to plaintiff.[43] The MADRAS view is not

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(34) 40 I.C. 650=44 I.A. 261=15 A.L.J. 645=2 P.L.W. 101 =33 M.L.J. 69=26 C.L.J. 143=19 Bom.L.R. 715=(1917) M.W.N. 628=40 Mad. 793=6 M.L.W. 501=22 C.W.N. 50=11 Bur.L.T. 48 (P.C.), cited in 80 I.C. 667 (671).

(35) 80 I.C. 667 (671)=3 Pat. 930, *supra*; *Cf. Kotilingam Mudaliar* v. *Board of Commissioners*, 104 I.C. 145=52 M.L.J. 452=1927 Mad. 1021 (2).

(36) 1929 Pat. 427, *supra*, citing, 7 I.C. 92=12 C.L.J. 211=14 C. W.N. 922.

(37) 1930 Pat. 277=11 P.L.T. 172=122 I.C. 152.

(38) Per *Kulwant Sahai*, in 1932 Pat. 319=140 I.C. 817=13 P.L.T. 590.

(39) 1933 All. 350.

(40) 10 Bom. 610 (F.B.).

(41) 7 I.C. 92=12 C.L.J. 211=14 C.W.N. 932.

(42) 15 I.C. 621; 16 I.C. 963.

(43) 1925 Cal. 814=86 I.C. 853.

consistent. Revision lies according to one set of rulings,[44] and does not lie according to others;[45] while a modified view is taken by a third set of authorities allowing revision when decision is unfavourable to plaintiff.[46]. The LAHORE[47] and RANGOON[48] High Courts are opposed to power of revision against such interlocutory order, where another remedy exists by way of appeal from order of rejection. The NAGPUR Court favours power of revision.[49] The PATNA view favours powers of revision, but such cases are exceptional.[50] Its latest tendency is against exercise of power of revision.[1]

519. **POWERS OF APPELLATE COURT.**—The MADRAS HIGH COURT, held in *Tekanna* v. *Aligiri*,[2] that under S. 12 (i), of the Court-fees Act, the decision on the question of Court-fee by the Court of first instance, is final between the parties, and hence the decision cannot be questioned by the defendant at the later stages of the suit, though the Court of appeal might itself take the question of Court-fee in the interests of the revenue, and pass necessary orders for the protection of revenue. The valuation for Court-fee is final as between the parties only. The Appellate Court is not bound in fixing the Court-fee by the decision of the lower Court as to stamp on plaint.[3] The *Patna* Full Bench case of *Krishna Mohan Panday* v. *Raghunandan Pandey*,[4] contains observations by the learned Judges which establish the proposition that "the High Court may, undoubtedly, under the second clause of S. 12, require a party to pay an additional fee upon the plaint or memorandum of appeal in the lower Court."[5] "The second clause of S. 12, gives a Court of appeal power to collect deficit Court-fee in respect of fees payable in subordinate Courts, and it seems now settled that the High Court as a Court of appeal, reference, and revision is competent to exercise this power in respect of all Court subordinate to it."[6]

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(44) 36 I.C. 831; 14 Mad. 169; 87 I.C. 25=1925 Mad. 722; 87 I. C. 660=1925 M. 713; 96 I.C. 129=1926 Mad. 678; 1933 Mad. 367 (1) =142 I.C. 195.

(45) 71 I.C. 173=1923 Mad. 270; 95 I.C. 424=1926 Mad. 768; 1927 Mad. 1162=102 I.C. 877; 1927 Mad. 1021 (2)=104 I.C. 145.

(46) 108 I.C. 539=51 Mad. 664; 1929 Mad. 191=114 I.C. 842; *Cf.* 95 I.C. 424=1926 Mad. 768; 1928 Mad. 416=51 Mad. 664; 1929 Mad. 396=119 I.C. 35; 1933 Mad. 506.

(47) 80 P.R. 1914=25 I.C. 565; 78 I.C. 604=1925 Lah. 191; 53 I.C. 427=120 P.R. 1919.

(48) 86 I.C. 509=1925 Rang. 199.

(49) 1927 Nag. 256.

(50) 44 I.C. 891=4 P.L.J. 191; 50 I.C. 470=4 P.L.J. 195; 80 I.C. 667=3 Pat. 930; *cf.* 1929 Pat. 427.

(1) 55 I.C. 786=1 P.L.T. 5; 56 I.C. 649=5 P.L.J. 400; 1930 Pat. 277; 122 I.C. 152; 1932 Pat. 319=140 I.C. 817.

(2) 25 I.C. 506.

(3) 6 Bom. 302; 15 Bom. 82.

(4) 4 Pat. 336=87 I.C. 137 (F.B.).

(5) 87 I.C. 137 (141)=4 Pat. 336=1925 Pat. 392=6 P.L.T. 262 (F.B.) Per Miller, C. J.

(6) 87 I.C. 137 (148) F.B., Per Mullick, J., *supra*.

The words in this second clause "are general, and they authorize the High Court to require the suitor to pay an additional fee both on the plaint, and on the memorandum of appeal in the High Court."[7]

520. Conditions requisite for exercise of power.—But this power of the High Court, under the section can only be exercised, when the following conditions, as appearing from the language of Cl. 2, of S. 12, are satisfied.

I. The case must be pending before the Superior Court, in appeal, reference, or revision.

II. The lower Court must have given a decision, including a tacit order, which is wrong, and "to the detriment of revenue."

III. The procedure of giving time to make good the deficiency to party concerned must then be followed in the Superior Court.

IV. Coercive measures of stay of suit until additional fee is paid is to be prescribed by the penal consequence of dismissal of suit, in default of payment.

521. Objection in appeal.—It has been noticed already, when dealing with the question of valuation, as distinguished from category of suit, that appeal is not barred when question is as to the particular nature of a suit, or as to the fundamental question of category.[8] Where an appeal lies under the Civil Procedure Code, against an order rejecting the plaint, or dismissing the suit,[9] the plaintiff-appellant, who fails or refuses to pay the additional Court-fee demanded by lower Court can raise the question of Court-fee in appeal[10] and according to same High Courts, in revision, under certain circumstances involving a refusal to exercise jurisdiction.[11] The defendant may also contest the sufficiency of plaintiff's Court-fee in trial Court, and the defendant as respondent to plaintiff's appeal may raise the preliminary objection that the Court-fee on the memorandum of appeal is insufficient.[12] An objection to a decree of the lower Court founded on the improper valuation of a suit, is not entertainable when taken for the first time in appeal.[13] When an order passed has been accepted by the defendant in the trial Court, it cannot be

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(7) 87 I.C. 137 (151) F.B., Per Das, J., *supra.*

(8) See comments, under heading "question as to valuation distinguished from category of suit," *ante.*

(9) See comments, under heading "Appeal from order of rejection of plaint." 5 I.C. 18; 12 C.L.R. 148; 28 Cal. 334; 11 All. 91 (F.B.); 3 Pat. 930, etc.

(10) *Ibid.* also see *Ladli Begam* v. *Ram Das,* 90 I.C. 321=1926 Pat. 488.

(11) See comments under heading "Revision," *ante,* 10 Bom. 610 (F.B.), etc.

(12) See and *Cf. Chimnu Lal* v. *The Bank of Upper India,* 40 I.C. 904=106 P.W.R. 1917.

(13) 1 B.H.C. 62; 19 All. 165.

reopened by him on appeal:[14] Similarly when a document has been admitted in evidence, without objection on the part of plaintiff, it cannot be struck off from the record on objections of plaintiff in appeal: but the appellate Court may levy deficit Court-fees.[15]

522. Duty of Appellate Court to protect Revenue.—An Appellate Court, might itself take the question of Court-fees in the interests of revenue and pass necessary orders for the protection of the revenue.[16] It is the duty of the High Court to see that the Court-fees are paid in the High Court, and in the Courts below from which the case has come,[17] for an irregularity amounting to fraud on Government revenue by depriving the state of its legitimate Court-fee is not to be permitted by the Courts.[18] Where in second-appeal it is discovered that a memorandum of cross-objections by the appellant in the lower Appellate Court was insufficiently stamped, a High Court has inherent jurisdiction to insist upon his paying the proper Court-fees throughout the litigation as a condition precedent to proceeding with the appeal, even though he does not appeal from that part of the decree which disallowed his cross-objections.[19] The Court of appeal can take action at any time before the final decision of the appeal,[20] but as a general rule, it is desirable that the question of recovering the deficit in the lower Court, should be taken up soon after the admission of the appeal, and in any case, whether the point is determined on motion at an early stage, or upon the haring of the appeal, the Court should decide it before the other issues in the case, so that if the point goes against the appellant, the Appellate Court may be in a position to stay the further hearing of the case until the appellant has complied with the obligation to make good the deficit.[21] A Court of appeal, when admitting an appeal is entitled to demand under the provisions of Cl. (v), of S. 12, of the Court-Fees Act, proper Court-fees payable in the Appellate Court as well as in the trial Court.[22] "The scheme of S. 12, of the Court-Fees Act is to see that the revenue is not defrauded, that the proper fee payable to Govern-

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(14) 40 I.C. 904=106 P.W.R. 1917.

(15) 94 I.C. 646=28 Bom.L.R. 525; *cf.* 36 I.C. 957.

(16) 25 I.C. 506 (F.-N. 1, *ante*).

(17) *Narain Prasad* v. *Kameshwar Prasad*, 43 I.C. 489=3 Pat.L.J. 101.

(18) *Muthu Erulappa Pillay* v. *Vunuku Thathayya*, 36 I.C. 957=10 Bur.L.T. 242.

(19) *Razik Behari Prasad* v. *Hridoy Narain*, 66 I.C. 769=3 P.L.T. 327=1922 Pat. 162.

(20) *Abdullah* v. *Secretary of State*, 82 I.C. 588=1925 Lah. 131 (1) (Citing *Jatra Mohan Sen* v. *Secretary of State*, 52 I.C. 435=46 Cal. 520; *Shanghai Life Insurance* v. *H. C. Brown*, 32 I.C. 534=9 Bur. L.T. 43; and *Radhika Roman Prasad Singh* v. *Jantikuer*, 51 I.C. 756.

(21) *Hitendra Singh* v. *Rameshwar Singh*, 1921 Pat. 88 (F.B.)= 62 I.C. 43=6 P.L.J. 293=2 P.L.T. 383.

(22) *In re Lakshmi Ammal*, 91 I.C. 729=49 M.L.J. 608=1925 M. W.N. 826=1926 Mad. 96, also see *Nihal Chand* v. *Ghulam Muhammad*, 19 I.C. 856.

ment as the "price of the trial of the suit has been paid."[23] "It is obvious that the section is intended to permit the taxing officer of a Court to raise the question *suo motu,* whether the parties have raised it or not."[24]

523. Case before Appellate Court.—An Appellate Court can take action *suo motu,* when the first necessary condition of its cognisance is satisfied that the suit or appeal has come up before the Court. The admission of the appeal marks the first stage when the Appellate Court can pass necessary orders in the interests of revenue: but it retains this power as long as the case remains pending before it, and is not finally disposed of.

Thus, it was held by the Calcutta High Court, in *Bidhu Bhushan* v. *Kala Chand Roy,*[25] that under sub-s. 2, the plaintiff-appellant may be called upon to pay the requisite additional Court-fees on a plaint as well as the memorandum of appeal filed by him which are found to be insufficiently stamped: but, "for the adoption of this course by the High Court it is necessary that the suit should have come before the High Court, which evidently means that the appeal should have been registered, because not till the appeal has been registered in the High Court can it be properly said that the suit has came before the High Court."[26] "The course is mandatory, and the power conferred by this provision of the law may be exercised at any time so long as the suit remains before the High Court on appeal."[27] "After the appeal has been registered, and before it is dealt with under O. 41 R. 11, Civil Procedure Code, it should be placed before the Court for proper orders being passed under S. 12 (ii), of the Court-Fees Act."[28] Similarly, it has been held by the MADRAS High Court, that "until the appeal was admitted it was not competent to the Judge to pass any order dismissing the original suit," for non-payment of deficit amount of Court-fee leviable on the plaint,[29] and, the recovery of deficit Court-fees cannot be made once the appeal is dismissed.[30] The section, as already noticed, is not applicable to decided cases, but can be used by an Appellate Court only before the Judge has become *functus officio.*[31]

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(23) Per Wallace, J., in *In re Lakshmi Ammal,* 91 I.C. 729 (733)= 1926 Mad. 96, *supra.*

(24) *Ibid.*

(25) 106 I.C. 335=1927 Cal. 775=31 C.W.N. 1045.

(26) *Ibid.*

(27) *Ibid.*

(28) *Ibid.*

(29) *Puthia Vittil Govinda* v. *Parameshwar,* 1 M.L.J. 528; also see *Kerala Verma* v. *Chadayam Kutti,* 15 Mad. 181 (the appeal had not been admitted and the Judge was held to have no jurisdiction to make any order).

(30) *Secretary of State,* in re, 1933 Mad. 321=1933 M.W.N. 333.

(31) 7 All. 528; 32 I.C. 534 (L.B.); 52 I.C. 435=46 Cal. 520; 82 I.C. 588=1925 Lah. 131; 1929 Oudh 483=6 O.W.N. 757; also see 51 I.C. 756=4 P.L.J. 472 (F.B.) and 58 I.C. 271=5 P.L.J. 508; *cf.* 1933 Pat. 234=14 P.L.T. 180; also see 1932 All. 316=140 I.C. 191.

524. REFERENCE OR REVISION TO HIGH COURT.—S. 113, of the Code of Civil Procedure Code, 1908, corresponding to S. 617, of the old Code, provides that "subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit." Under O. 46, Rule 1, Civil Procedure Code, a reference can be made to the High Court only in a *suit,* or an *appeal in a suit,* in which a point arises on which the Court entertains reasonable doubt, and in which the decree is not subject to appeal. Therefore no reference can be made to the High Court in appealable cases. The Court having seisin of a case must decide the question of Court-fee for itself,[32] as it is only when the Court's decree is not subject to appeal that a reference can be made under the Civil Procedure Code. The subject of revision under S. 115, Civil Procedure Code, or under letters patent, has already been dealt with.

525. SECOND APPEAL.—S. 12, Cl. (1), is not applicable to original side of the High Court, but as noticed already, the Full Bench case of the Patna High Court, has established the proposition that Cl.. (2), of S. 12, empowers the High Court, to take action in the interests of revenue, and to pass necessary orders requiring a party to pay an additional fee upon the plaint as well as on a memorandum of appeal in the lower Court.[33] In *Narain Singh* v. *Chaturbhuj Singh*[34] it was discovered on second appeal to the High Court that the respondent, when appellant in the lower Appellate Court had not paid a sufficient Court-fee on his memorandum of appeal in that Court, and it was not doubted that the High Court was competent to take action under the second paragraph of S. 12, and similar view has been taken in the Full Bench case of *Mahulal* v. *Nandkishore,*[35] explained in *Baij Nath* v. *Dhani Ram.*[36] The PUNJAB CHIEF COURT, has held, in a Full Bench ruling, that the word "suit" in S. 10 (ii), of the Court includes appeal.[37] Consequently, when it is found in the High Court that the Court-fee paid on the plaint, or on the memorandum of appeal in the lower Appellate Court, is insufficient, the provisions of S. 12, Cl. 2, of the Court-Fees Act, would apply, and the consequence of the action taken by such Superior Court would be such as is provided for in S. 10 (ii), of the *Act.*[38] In *Narain Prasad* v. *Kameshwar Prasad,*[39] the PATNA HIGH COURT, held that the plain duty of the Court was to require the appellant to pay a deficiency

(32) *Pir Baksh* v. *Faiz Muhammad,* 1906 A.W.N. 180. (No reference can be made under O. 46, R. 1, in an inquiry as to the proper Court-fee payable on a memorandum of appeal).

(33) 4 Pat. 336=87 I.C. 137=1925 Pat. 392 (F.B.), see (F.-N. 3, above).

(34) 20 All. 362=(1898) A.W.N. 72.

(35) 28 All. 270=2 A.L.J. 830=A.W.N. (1905) 280 (F.B.).

(36) 117 I.C. 107=27 A.L.J. 1024=1929 All. 77.

(37) *Dayal Singh* v. *Ram Rakha,* 109 P.R. 1912 (F.B.)=15 I.C. 463 F.B.), also see *Nihal Chand* v. *Ghulam Muhommad,* 19 I.C. 856.

(38) *Ibid.* 54 P.R. 1912 (F.B.).

(39) 43 I.C. 489=3 P.L.J. 101.

in the Court-fee in the Court below before they could entertain an appeal arising out of the same suit by that appellant. This view was followed in the later case of *Rasik Behari Prasad* v. *Hridoy Narayan*,[40] where it was held that when in a second appeal it is discovered that a memorandum of cross-objections by the appellant in the lower Appellate Court was insufficiently stamped, the High Court had discretion to insist upon his paying the proper Court-fee throughout the litigation; and had power to refuse to entertain his appeal until the deficit in the lower Appellate Court had been paid.

526. Wrong decision by Lower Court—Powers of High Court or Taxing Officer.—The Allahabad High Court, held in *Mt. Bahal Kuar* v. *Narain Singh*,[41] that the Taxing Officer had the power to decide disputed questions of Court-fee vested in him, by S. 5, of the Act, subject to his power to refer the matter to the Taxing Judge, when a question of general importance arises. "This authority extends to all questions arising in the High Court, whether the deficiency alleged is on the memorandum of appeal in the High Court, or on a plaint or memorandum of appeal filed in the Court below." No reasons are given for this answer to the reference: and it is not noticed that the construction of this section is to be very strict, and there is an opposite view held by the BOMBAY HIGH COURT, in the case of *Raghunath* v. *Gangadhar*,[42] where it was observed that "a taxing officer would be exceeding his power were he to take upon himself to decide the very question on which the appellant, by the memorandum of his appeal, seeks for a judicial decision of the Court after arguments on both the sides. He would be virtually usurping the powers of the Court, and would be in reality assuming to himself the oppellate powers over subordinate Judges." It was therefore, laid down as a rule for the guidance of the office, that when an appeal is presented against a decree passed under S. 54 (*a*), Civil Procedure Code, (O. 7, R. 11, Civil Procedure Code), the office should not go into the question of the Court-fees beyond seeing that the same amount of Court-fee as has been paid on the plaint is paid on the memorandum of appeal.[43] Similarly, it has been held by Miller, C.J., in the PATNA FULL BENCH CASE of *Krishna Mohan* v. *Raghunandan*[44] that "the High Court, may, undoubtedly, under the second clause of S. 12, require a party to pay an additional fee upon the plaint, or memorandum of appeal in the lower Court, and this power is conferred on the Court itself as distinguished from the Taxing officer whose powers are confined under S. 5, to the fees payable in the High Court." However, Madras High Court, in In re *Lakshmi Ammal*,[45] has made remarks which show that it takes a view similar to that of

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(40) 66 I.C. 769=1 Pat. 471=3 P.L.T. 327.
(41) 84 I.C. 822=22 A.L.J. 1038=1925 All. 184.
(42) 10 Bom. 60 (61).
(43) *Ibid.*
(44) 87 I.C. 137 (141)=1925 Pat. 392=4 Pat. 336=6 P.L.T. 262 (F.B.).
(45) 49 M.L.J. 608=1926 Mad. 96=1925 M.W.N. 826=91 I.C. 729.

the Allahabad High Court as regards the powers of a Taxing officer in the High Court. It is to be noticed that the point has been assumed, and not discussed in either the Allahabad, or the Madras cases above referred to.

527. "**Detriment of Revenue**".—It has been held that the provision in S. 12, has been enacted for fiscal purposes, and with a view to safeguard the interests of the revenue, by enabling the Appellate Court to interfere when the erroneous decision by the lower Court, is "to the detriment of the revenue."[46] The Court of appeal, review or revision, may act under the second paragraph of S. 12 of the Court-Fees Act, for the protection of the revenue, even where the party cannot appeal, and question the correctness of the order directing payment of additional Court-fee.[47] S. 12 of the Court-Fees Act expressly empowers the Court of appeal, reference, or revision, to act under the second paragraph of S. 12, for the purpose of protecting the revenue, when the order passed by the lower Court, amounts to a wrong decision "to the detriment of the revenue" *i.e.*, when there has been an under-charge. There is no corresponding power, or obligation on the Appellate Court to act where there has been an overcharge in the matter of Court-fee in the Courts below.[48] But, it is always open to a party to take the question as a ground of appeal: and the Court may investigate the valuation made by a trial Court for the purpose of determining jurisdiction, on revision, or in exercise of its inherent powers.[49] Although provisions in fiscal statutes are not to be construed as to furnish a chance of escape, and a means of evasion, a fiscal statute must be strictly construed, and liability or additional liability cannot be imposed on the subject except by clear, and unambiguous terms.[50] Accordingly, where the question of valuation had not been wrongly decided by the trial Court, and the Court had directed the plaintiff to pay additional Court-fee, which the plaintiff failed to carry out as promised, it was held that the additional Court-fees could not be levied from the party except in exact conformity with the precise words of the statute, and S. 12 (2) was of no assistance.[1] In *Muthu Erulappa Pillay*

(46) *Peary Shaw* v. *Surajmal*, 16 I.C. 575; *Narain Singh* v. *Chaturbhuj*, 20 All. 362=18 A.W.N. (1898), 72; also see *Tekamma* v. *Alagiri*, 25 I.C. 506. *In re Lakshmi Ammal*, 91 I.C. 729 (733); and *Krishna Mohan* v. *Roghunandan*, 87 I.C. 137 (145) F.B.—Per Jowala Prasad, J.

(47) *Ladli Begum* v. *Ramdas*, 90 I.C. 321=6 P.L.T. 448=1926 Pat. 488. (On a question of valuation pure and simple a party cannot appeal, but the Court may act under the second paragraph of the Court-Fees Act for the purpose of protecting the revenue.)

(48) *Narayan Madhavrao* v. *The Collector of Thana*, 2 Bom. 145. (*Held*, that under S. 12, Cl. 2, a Court of appeal is empowered to require the payment of additional fee, but has no authority to reduce the fee, if wrongly decided to the detriment of the subject, and the advantage of the revenue).

(49) 90 I.C. 321=6 P.L.T. 448=1926 Pat. 488, *supra*.

(50) *Nand Lal Agrani* v. *Jogendra Chandra Datta;* 82 I.C. 297=1924 Cal. 881=39 C.L.J. 222=28 C.W.N. 403.

(1) *Raj Rajeswari Jin*, v. *Gati Krishna Chakravarti*, 82 I.C. 292=39 C.L.J. 217=1924 Cal. 953.

v. Vunuka Thathayya, the Lower Burma Chief Court, has held that an Appellate Court cannot make an order for payment of an additional Court-fee when no fee at all has been paid, and where the Original Court has not decided the question of valuation.[2]

528. PROCEDURE.—S. 12, Cl. 2, provides that where the Appellate Court finds that the proper fee has not been levied in the lower Court,[3] the procedure laid down in S. 10 (ii), of the Act should be followed.[4] This comprises, *firstly,* that the Court shall fix a time for payment of the deficit Court-fee, which may be extended from time to time, in the discretion of the Court; and, *secondly,* the suit shall be stayed, until the additional fee is paid, which means that no further hearing of the case in the Appellate Court is to take place, until the Court's directions as to the payment of deficit Court-fee have been duly complied with; and *lastly,* the penal consequence that the suit, or appeal, *shall be dismissed* if the deficit is not made good; and the party in default will lose all the benefit of litigation for contempt of orders of the Court. The Punjab Chief Court has held, in a Full Bench ruling, that the word 'suit' in S. 10 (ii), of the Court-Fees Act includes appeal.[5] Consequently, it is competent in the High Court, to call upon the appellant in the Court of first appeal to make good the deficiency in the Court-fee on the memorandum of appeal in that Court, within a reasonable time to be fixed by the Court. And, on his failing to do so, the High Court could take action such as is provided for in S. 10 (ii), of the Court-Fees Act.[6] As pointed out already, this procedure can be adopted so long as the case is before the Appellate Court, but not where a second appeal, or appeal is dismissed under O. 41, R. 11, Civil Procedure Code. Action can be taken under S. 12, read with S. 10, of the Court-Fees Act, only after the appeal is admitted for hearing, and is pending on the registers of the Court.[7]

529. Deficiency in Court-Fee by either party—Jurisdiction of Appellate Court—The Appellate Court has power to Act, in the interests of revenue, in respect of any wrong

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(2) 36 I.C. 957; *Compare, Maneklal Vadilal* v. *Chandulal Balabhai,* 94 I.C. 646=1926 Bom. 343=28 Bom.L.R. 525. (*Held,* that a party cannot take objection, but the Court of appeal is entitled to allow the document to be admitted in evidence on payment of Court-fee).

(3) See *Shama Soondary's case* (7 Cal. 348=8 C.L.R. 528), where it was held that it is not necessary that a distinct question or issue relating to valuation must have been disposed of in the lower Court also.

(4) See *Narain Singh* v. *Chaturbbuj Singh,* 20 All. 362=(1898) A.W.N. 72. (*Held,* that all proceedings in a suit up to decree are parts of the suit, and the second paragraph of S. 12, makes the procedure set forth in the second paragraph of S. 10, applicable to the case, when the question of Court-fee is wrongly decided "to the detriment of the revenue").

(5) *Dayal Singh* v. *Ram Rakha,* 169 P.R. 1912 (F.B.)=15 I.C. 463.

(6) *Ibid.*

(7) *Rajdeo Narain Singh* v. *Ramdil Singh,* 58 I.C. 271=5 P.L.J. 508. Compare *Narayan Singh* v. *Chatturbhuja,* 20 All. 362 (decree passed not to be executed till deficit made good).

decision given or implied,[8] in the order of the lower Court, and this power may be exercised both in respect of the Court-fee payable by a plaintiff on his plaint, or memorandum of appeal;[9] and in respect of Court-fee payable by the defendant on his written statement in respect of a plea of set-off,[10] which is of the nature of a cross-claim. But, it has been held that the section is not applicable to the case of the cross-objections, by defendant-respondent, under O. 41, R. 22, Civil Procedure Code.[11] Where both parties to the appeal have to pay deficit Court-fee, the proper procedure is to direct the defendant-appellant to pay the deficit Court-fees in appeal, before the plaintiff-respondent is called upon to make good the deficiency in the Court of the first instance.[12] In a Madras case, the facts of which are somewhat peculiar, the High Court held that the order of the District Judge in dismissing the suit for failure of plaintiff to pay additional stamp duty demanded was irregular for the following among other grounds. In the first place he had no jurisdiction over the whole subject-matter of the suit, the appeal by one of four defendants related to one item only, in respect of the interest. Secondly, the appeal had not been admitted when the order was passed.[13]

530. **COERCIVE MEASURES AND PENAL CONSEQUENCES OF DEFAULT—(1) Allahabad.**—In *Narain Singh* v. *Chaturbhuj Singh*,[14] it was discovered on second appeal to the High Court that the respondent when appellant in the lower Appellate Court, had not paid a sufficient Court-fee on his memorandum of appeal in that Court, and as this deficiency in Court-fee required on the memorandum of appeal in the lower Appellate Court, was not made good up to the date of the hearing of the second appeal, the High Court was competent to dismiss the respondent's appeal to the lower Appellate Court, but it merely ordered the stay of execution of the decree, if any, of the High Court in favour of the respondent until such time as the additional Court-fee due by him might be paid. A similar course was adopted in the Full Bench case of *Mohanlal* v. *Nand Kishore*,[15] and the

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(8) *Shama Sundari* v. *Hurro Sundari*, 7 Cal. 348; *Bidhu Bhusan* v. *Kala Chand Roy*, 1927 Cal. 775; *In re Lakshmi Ammal*, 91 I.C. 729=1926 Mad. 96.

(9) *Krishna Mohan Panday* v. *Raghunandan Pandey*, 87 I.C. 137 (141) F.B.=4 Pat. 336=1925 Pat. 392; also see *Narain Singh* v. *Chaturbhuj Singh*, 20 All. 362; *Mohanlal* v. *Nand Kishore*, 28 All. 270 (F.B.); and, *Dayal Singh* v. *Ram Rakha*, 129 P.R. 1912=15 I.C. 463 (F.B.).

(10) *Chenappa* v. *Raghunathan*, 15 Mad. 29; *Maniklal* v. *Chandulal*, 94 I.C. 646=1926 Bom. 343; also see *Muthu Erulappa* v. *Vunuku Thathayya*, 36 I.C. 957.

(11) *Husan Band* v. *Nizamuddin*, 13 A.W.N. 85; *Cf. Rasik Behari Prasad* v. *Hridoy Narain*, 66 I.C. 769=1 Pat. 471=3 P.L.T. 327 (proper Court-fee held leviable on memorandum of cross-objections by the appellant in the lower appellate Court).

(12) *Gangadhar Ayyar* v. *Veta Chetty*, 14 M.L.J. 144.

(13) *Kerela Verma* v. *Chadayan Kutti*, 15 Mad. 181.

(14) 20 All. 362=1898 A.W.N. 72.

(15) 28 All. 270=2 A.L.J. 839=A.W.N. (1905) 280.

High Court decided to withhold the execution of the decree in the respondent's favour in the lower Appellate Court until such deficiency had been made good; but, in the case of *Madanlal* v. *Jaikishendas*,[16] the High Court dismissed the respondent's appeal to the lower Appellate Court, and restored the decree of the first Court, on finding that the appellant when called upon to make good the deficiency of Court-fee payable upon the memorandum of appeal in the lower Appellate Court, had neglected or refused to do so. The Full Bench case of *Mohanlal* v. *Nandkishore*,[17] was explained in *Baijnath* v. *Dhani Ram*,[18] where the High Court refused to hear the respondent's counsel on the ground that there was a deficiency in the Court-fee paid by the plaintiff-respondent in the Court of first instance. It was observed that the procedure of staying execution of the decree in favour of the respondent, if such should be passed, until such time as the additional Court-fee due by him may be paid, was not the only way of bringing pressure on the respondent to make good the deficiency. "The Court-Fees Act does not provide any means by which the deficiency in Court-fee can be realised. The Courts have always taken it upon themselves to realise it by such lawful means as might be open to them." And, "one of the ways that was open to the Court of enforcing payment would be not to hear the counsel for the respondent, who was in contempt."[19]

531. (2) Bombay.—It was held in *Achut Ramchandra* v. *Nagappa Bab Balgaya*,[20] that under S. 107, sub-S. 2 of the Civil Procedure Code, which reproduces S. 582 of the old code, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the code on Courts of original jurisdiction in respect of suits instituted therein. Thus a memorandum of appeal may be rejected by reason of insufficiency of stamp: and the Court's discretion must be exercised in accordance with the special provisions of O. 7, R. 11, (*c*): and, thereafter, S. 149 Civil Procedure Code would come into play, which must be interpreted not in a restricted sense of being limited to cases where there was a *bona fide* misunderstanding of the law as to valuation, but is intended to give the Court a free and unshackled discretion in the matter.

532. (3) Calcutta.—It was pointed out in *Shama Soondry's* case[21] that the provision in Cl. 2, makes it clear that unless the plaintiff submits to the order of the Superior Court, he loses any advantage that he may have obtained on his improperly stamped plaint, *e.g.*, where the District Judge, on taking up an appeal, is of opinion that the plaint bore an inadequate stamp, it is his duty as the Appellate Court to take action for the protection of the

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(16) A.W.N. (1905) 277=1 A.L.J. 392.
(17) See F.-N. (4), *supra*.
(18) 117 I.C. 107=27 A.L.J. 1024=1929 All. 77.
(19) 117 I.C. 107 (108)=1929 All. 577=(1929) A.L.J. 1024.
(20) 21 I.C. 337=15 Bom.L.R. 902=38 Bom. 41.
(21) 7 Cal. 348 (351)=8 C.L.R. 528.

revenue, and to call upon the plaintiff to make good the deficit stamp in the Court-below, and if the plaintiff fails to do this within the required time, the suit shall be dismissed. This dismissal, however, will be on the ground that the Court could not try the suit, and not on its merits. Similarly, it was held in *Raj Rajeshwari* v. *Gatikrishna,*[22] that the breach of an undertaking given to the Court by a litigant, pending proceedings, on the faith of which the Court sanctions a particular course of action, or inaction, is misconduct amounting to contempt, and the rule is that when a person is found guilty of such contempt, he places himself in a perilous situation so as not to be heard by the Court till he has purged his contempt.[23] "A litigant in contempt has no standing in the Court." Accordingly, where a plaintiff valued his suit at Rs. 1,125, in the trial Court, and the appeal lay to the Court of the District Judge; but, adopting the view of the subordinate Judge that the value of the subject-matter of the litigation was Rs. 6,000, he came up to the High Court, but most inconsistently refused to pay the Court-fee leviable on the plaint in a suit valued at Rs. 6,000, the High Court refused to entertain his appeal.

533. **(4) Punjab.**—In *Dyal Singh* v. *Ramrakha,*[24] the Punjab Chief Court, held that it was competent in the High Court to call upon the appellant in the first Court of appeal to make good the deficiency in the Court-fee on the memorandum of appeal in that Court, and, on his failing to do so, to dismiss the appeal in that Court, should the appeal have been decided in his favour, after reasonable time had been allowed to make good such deficiency, or, in case the appeal in the lower Appellate Court of the party appealing to the High Court has been dismissed, to refuse to entertain his appeal to the High Court, until the deficiency is made good, a reasonable time being allowed for such purpose, after which, should the deficiency not have been made good, the appeal to the High Court would stand dismissed.[25]

534. **(5) Madras.**—It was held, by the Madras High Court, in the case of *Krishnasami* v. *Sundarappayar,* that the plaintiff not having in the first instance paid the full Court-fees, he should have been called upon to do so. Where this was not done, the Court of first appeal was not in error in entertaining the appeal which was preferred by the plaintiff; but the High Court observed that the lower Appellate Court should have passed no decree until the fees due had been paid, and if they were not paid he should have dismissed the suit.[26]

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(22) 82 I.C. 292=39 C.L.J. 217=1924 Cal. 953.

(23) *Ibid.* Citing 4 I.C. 746=10 C.L.J. 631, where some English cases are discussed.

(24) 15 I.C. 463 (F.B.)=109 P.R. 1912 (F.B.)=136 P.W.R. 1912.

(25) 15 I.C. 463 (F.B.)=109 P.R. 1912 (F.B.); also see *Nihal Chand* v. *Ghulam Muhammad,* 19 I.C. 856=235 P.L.R. 1913.

(26) 43 I.C. 489=3 P.L.J. 101.

535. (6) Patna.—In *Narain Prasad* v. *Kameshwar Prasad*,[27] the PATNA HIGH COURT held that the plain duty of the Court was to require the appellant to pay a deficiency in the Court-fee in the Court below before they could entertain any appeal arising out of the same suit by that appellant. This was followed in the later case of *Rasik Behari Prasad* v. *Hridoy Narain*, already noticed under the heading of second appeal.[28] Similarly, it has been held in *Brijkrishna Das* v. *Murli Rai*,[29] that where upon the proper valuation of a suit an Appellate Court finds that there is a deficit in the amount of Court-fees paid by the plaintiff on his plaint, and memorandum of appeal, the correct procedure for the Court to adopt is to call upon the plaintiff to make good the deficiency and on his failing to do so, to enforce its order by the dismissal of his suit.

536. REVIEW.—The "*finality*" of the order of the first Court does not bar the Court reviewing its own order, either on the application by the plaintiff or of its own motion, at any time prior to disposal of the case, by rejection of the plaint, or the dismissal of the suit.[30] S. 12 of the Court-Fees Act does not prevent a Court from reviewing its own order, unfavourable to a party; on the contrary, S. 151, Civil Procedure Code empowers it to do so.[31]

Fees paid on memorandum of appeal.

13. If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in S. 351 (O. 41, R. 23) of the same Code for a second decision by the lower Court, the same Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal:

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(27) 18 Mad. 415=5 M.L.J. 164.

(28) 66 I.C. 769=1 Pat. 471=3 P.L.T. 327. (*Held*, that the High Court had discretion to insist upon the appellant, paying the proper Court-fee throughout the litigation, and had power to refuse his appeal until the deficit in the lower appellate Court on a memorandum of cross-objections, had been paid).

(29) 56 I.C. 316=4 P.L.J. 703.

(30) *Chandramoni Koer* v. *Basdeo Narain Singh*, 49 I.C. 442 (449) =4 P.L.J. 57.

(31) *Mani Lal* v. *Durga Prasad*, 80 I.C. 667=1924 Pat. 673=3 Pat. 930=5 P.L.T. 425, and *Rajdeo Narain Singh* v. *Ramdil Singh*, 58 I.C. 271=5 P.L.J. 508. (*Held*, that when the appeal is admitted to a hearing, the Court is then in full seisin of the case, and can punish the defaulting plaintiff or first appellant, as the case may be, by the dismissal of his suit or appeal).

Provided that if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

Synopsis.

1. Legislative change.
2. Scope, and application.
3. Mandatory provisions.
4. Construction of the section.
5. Remand under, O. 41, R. 23, on preliminary point.
6. Preliminary point, meaning of.
7. Illustrative cases.
8. Preliminary point, whether may relate to the merits of the case.
9. Suit dismissed or decreed on preliminary point.
10. Preliminary decree.
11. Decision on all the issues.
12. Dismissal of suit on preliminary point.
13. Remand on addition of parties.
14. Remand directing amendment of plaint.
15. Disposal of whole suit on preliminary point.
16. Reversal of decision of lower Court.
17. Remand for retrial outside O. 41, R. 23.
18. Refund of Court-fee on remand.
19. Refund of excess-fee allowed under S. 151, Civil Procedure Code.
20. Refunds not allowed.
21. Refund under special Acts and provisions.
22. Application for refund of stamps.
23. Proviso.

537. **LEGISLATIVE CHANGE.**—The reference in S. 13 of the Court-Fees Act, to S. 351 of the old code (Act VIII of 1859) shall be taken to be made to O. 41, R. 23, of the present code, (*vide* S. 158, Civil Procedure Code).

538. **SCOPE, AND APPLICATION.**—This section provides for refund of fee paid on memorandum of appeal, in the following circumstances:—

(1) When a *plaint is rejected* by a Court, under O. 7, R. 11, Civil Procedure Code, in the four classes of cases mentioned in Cls. (*a*) to (*d*) of the said rule, and is ordered to be received in appeal:

(2) When a memorandum of *appeal is rejected*, under O. 41, R. 3, Civil Procedure Code, for not being drawn up in the manner prescribed by Rr. 1 and 2, of O. 41, Civil Procedure Code; or, when a memorandum of appeal is rejected, under O. 7, R. 11, Civil Procedure Code, read with S. 107, for failure to make good the deficit Court-fee stamp; and is ordered to be received on appeal:

(3) When a plaint, or memorandum of appeal, is disposed of by the lower Court on a preliminininary point, and there is a remand order for a second decision by the lower Court.

It cannot be held that under the Code of Civil Procedure, there is no power to order a retrial except in a case where a Court of first instance has decided a suit on a preliminary point.[32] But,

(32) *Withoba* v. *Waman*, 42 I.C. 304 (Nag.). also see, *Farzand Ali Ekadshi*, 73 I.C. 591=26 O.C. 10=10 A.L.J. 36=1923 Oudh 177; and, *Balaram* v. *Jagannath*, 92 I.C. 684=1925 Pat. 760.

a Court is not justified in ordering a refund of Court-fees except where the decision of the Court of first instance has been on a preliminary point only.[33] Where a refund is claimed under S. 13 of the Court-Fees Act, there must be a remand under O. 41, R. 23 of the Civil Procedure Code, which applies only when the original Court, has disposed of the suit on a preliminary point,[34] R. 23, of O. XLI, Civil Procedure Code, is the only rule which allows a Court of first appeal to remand a case for a second decision by the Original Court; and, it is only when a remand is made under this rule that S. 13 of the Court-Fees Act permits and directs the refund of the Court-fee paid on the memorandum of appeal.[35]

The section does not apply where the suit has not been disposed of by the first Court on a preliminary point;[36] or, where a decree is set aside against some of the respondents only, and the whole case has not been sent down for a second decision against all the respondents.[37]

539. MANDATORY PROVISIONS.—In a case of remand under O. 41, R. 23, Civil Procedure Code, the refund of Court-fee paid on a memorandum of appeal, is mandatory under S. 13, Court-Fees Act.[38] The section makes it compulsory upon the Court to grant the certificate mentioned in that section; and the Court has no discretion in the matter.[39] Where the suit had been dismissed on a preliminary ground, and upon appeal the decision is reversed, the Appellate Court cannot by holding the defendants to blame for the necessity for the appeal, proceed to "order no refund of the Court-fee in appeal." Such an order was held to be not only wrong, but of no effect.[40]

540. CONSTRUCTION OF THE SECTION.—The Court-Fees Act is a fiscal enactment, which has to be read as far as possible in favour of the subject, and the Allahabad High Court has given a wide meaning to the words "*suit*" and lower Court" in the section. The word "suit" is taken to include proceedings

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(33) *Withoba* v. *Waman*, 42 I.C. 304 (Nag.); citing, *Jagannath* v. *Maruti*, 36 I.C. 241=12 N.L.R. 126.

(34) *Nand Kumar Singh* v. *Bilas Ram Marwari*, 43 I.C. 855=(1917) Pat. 377=4 P.L.W. 100=3 P.L.J. 116.

(35) *Jagannath* v. *Maruti*, 36 I.C. 241=12 N.L.R. 126; also see, *Agent, B.N.Ry.* v. *Beharilal Dutt*, 90 I.C. 426 (427)=1925 Cal. 716=52 Cal. 783=29 C.W.N. 614; and, *Mohammad Shafi* v. *Panchayat Fatchgarb*, 100 I.C. 49=1927 Lah. 196.

(36) *Nand Kumar Singh* v. *Bilas Ram Marwari*, 43 I.C. 855=(1917) Pat. 377=4 P.L.W. 100=3 P.L.J. 116 (case of an appeal against a preliminary decree, refund could not be given).

(37) *In the Malter of Bhagwanti*, 39 I.C. 28=14 A.L.J. 671.

(38) *Bansi Lal* v. *Jhamman Shah*, 122 I.C. 485=1930 Lah. 441, also see, *Surendra Nath Roy* v. *Grija Nath Roy*, 15 I.C. 910=15 C.L.J. 658, and (F.-n. 197, past).

(39) *Bhansing Rogho* v. *Chaganiram Harchand*, 45 I.C. 552=20 Bom. L.R. 348=42 Bom. 363.

(40) *Gaura Telin* v. *Shriram Bhoyer*, 92 I.C. 926=1926 Nag. 265; also see *Bamoi Lal* v. *Jhamman Shah*, 122 I.C. 485=1930 Lah. 441.

in appeal;[41] and, the "lower Court" includes the Court of first instance, where the Appellate Court is the High Court.[42] In *Dayal Singh* v. *Ram Rakha*,[43] it was expressly held by a Full Bench of the Punjab Chief Court that in Ss. 10 (ii), and 12 (2) of the Court-Fees Act, the word "*suit*" includes an appeal, so that the appeal of a defaulting appellant must be dismissed on his failure to make up the deficiency in Court-fees when called on to do so: The ALLAHABAD HIGH COURT took a similar view in *Narain Singh* v. *Chatarbhuj Singh*,[44] which decision was approved and followed in the Full Bench ruling in the case of *Mohanlal* v. *Nand Kishore*.[45] Another Full Bench ruling of the same High Court, has held in the case of *Shanti Lal* v. *Agha Dost Mohammed*,[46] reviewing the above cases, that the word "*suit*" must be given a wide meaning in S. 13, and an appeal is to be treated as a proceeding in the suit, because "when an appeal is admitted against the trial Court's decree, the suit becomes *sub-judice* again. The Appellate Court's decree does no doubt decide the appeal, but it also decides the suit." On this view, it was held that when a Court of second appeal remands a case to a lower Appellate Court, under O. 41, R. 23, Civil Procedure Code, the appellant is entitled, under S. 13, Court-Fees Act, to a refund of the Court-fee paid on the memorandum of appeal. The proceedings in first appeal and in second appeal are taken as merely successive stages of the suit, and the suit does not terminate so long as any appeal is pending.[47] In *Kanhaiyalal* v. *Mt. Mahadei*,[48-49] the ALLAHABAD HIGH COURT, has held that a wide meaning is to be given to the expression "*lower Court*" as including the Court of first instance where the Appellate Court is the High Court. In this view, the words "Memorandum of Appeal" in the last line of S. 13, paragraph 1, would mean the memorandum of appeal filed in the High Court. Consequently, where the suit was brought against six defendants for recovery of a certain sum by sale of the property, and the suit was dismissed *in toto* by the trial Court, but the Appellate Court held that defendants 3 to 5 were liable, and sent back the case to the Court of first instance for adjudication of their liability, but the plaintiff filed a second appeal, whereupon the High Court held that the remaining defendants 1 and 6 were equally liable, and passed an order modifying the decree of the Court below, and remanded the suit to the Court of first instance for trial in its entirety, the case was held

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(41) *Narain Singh* v. *Chaturbbuj Singh*, 20 All. 362=(1898) A.W.N. 72; *Mohanlal* v. *Nandkishore*, 28 All. 270=2 A.L.J. 839=(1905) A.W.N. 280.

(42) *Kanhaiyalal* v. *Mt. Mahadei*, 140 I.C. 466=(1932) A.L.J. 320=1932 All. 550 (2)=54 All. 523.

(43) 109 P.R. 1912 (F.B.)=15 I.C. 463 (F.B.)=136 P.W.R. 1912

(44) 20 All. 362=(1898) A.W.N. 72.

(45) 28 All. 270=(1905) A.W.N. 280=2 A.L.J. 839.

(46) 140 I.C. (F.B.)=1932 All. 641 (F.B.)=54 All. 1081=(1932) A.L.J. 745.

(47) 140 I.C. 56 (F.B.), *supra*.

(48-49) 140 I.C. 466=(1932) A.L.J. 320=1932 All. 550 (2)=54 All. 523.

to be covered by S. 13, paragraph 1 of the Court-Fees Act, and the fee paid by the appellant was held refundable.[50]

541. REMAND UNDER O. 41, R. 23, ON A PRELIMINARY POINT.—It has been noticed above that O. 41, R. 23, Civil Procedure Code, empowers the Appellate Court to remand the case only when the lower Court has disposed of the suit upon a preliminary point,[1] and not on the merits.[2] When an order of remand is made under R. 23, the *whole case*, except the preliminary point aforesaid, has to go back, for a second decision to the lower Court.[3]

542. PRELIMINARY POINT, MEANING OF.—In *Sheoambar Singh* v. *Lallu Singh*,[4] Mahamed, J., of the Allahabad High Court, held that the expression "*preliminary point*" is not confined to such legal points only as may be pleaded in bar of suit, but comprehends all such points as may have prevented the Court from disposing of the case on the merits, whether such points are pure questions of law, or pure questions of fact. On this view, a decision will be taken on a preliminary point where the Court of first instance, having framed issues, and recorded all the evidence, has decided the suit with reference to its findings upon one or more of the issues framed by it leaving other issues undecided.[5] In *Ramchandra Joshi* v. *Haji Kassim*,[6] Muthuswami Aiyar, J., of Madras High Court, held that the expression means "some point either collateral to the merits which precluded their determination altogether, or some particular question which though relating to the merits, precluded their general determination." Thus, the only meaning that can be properly given to the words "preliminary points" is any point the decision of which avoids the necessity for the full hearing of the suit: and, it may be a one of fact or of law; but it must be such that the decision thereon in a particular way is sufficient to dispose of the whole suit, without the necessity for a decision on, the other points in the case. It is not restricted to points which are strictly independent of the merits.[7] Plowden, J. of the PUNJAB CHIEF COURT, defined a "preliminary point" to mean "a point collateral to the merits of the case, the decision upon which in one way may put an end to the case, and in another way, leaves a subsisting case upon the merits.[8] But, this view has been

(50) *Ibid.*

(1) *Jagannath* v. *Maruti*, 36 I.C. 241=12 N.L.R. 126; *Withoba* v. *Waman*, 42 I.C. 304 (Nag.); *Nand Kumar* v. *Bilas Ram*, 43 I.C. 855=3 P.L.J. 116.

(2) *Nurul Gani* v. *Kazamaini*, 66 I.C. 922=1923 Cal. 923.

(3) In the *Matter of Bhagwanti*, 39 I.C. 28=14 A.L.J. 671.

(4) 9 All. 26 (Note), 30, also see 10 All. 289.

(5) *Matadin* v. *Jama Das*, 27 All. 691, also see *Kamta* v. *Parbhudayal*, 37 I.C. 383=39 All. 165=15 A.L.J. 30.

(6) 16 Mad. 207, also see *Fernandez* v. *Souza*, 61 I.C. 829=1921 Mad. 118=13 M.L.W. 54.

(7) *Raman Nayar* v. *Krishnan Nambudri*, 69 I.C. 828, F.B. (832)=1922 Mad. 505 (F.B.)=45 Mad. 900 (F.B.).

(8) 109 P.R. 1887, also see *Nand Lal* v. *Gurdittamal*, 99 P.R. 1902=141 P.L.R. 1902.

dissented from in the Full Bench case of *Abdul Gafar Khan* v. *Muhammad Ziauddin*,[9] where it has been held that the expression "preliminary point," connotes a point the decision upon which is sufficient for the disposal of the suit, and that it is not necessarily a point collateral to the merits, or even a law point. It means and includes any point, whether of law or fact, the decision of which if adverse to the plaintiff puts an end to the suit without requiring the Court to go into the other questions that arise in the event of its being found in the plaintiff's favour. Any point the decision of which does not enable the Court to decide the suit, is, on the other hand, excluded from the category of a "preliminary point."

The question whether a point is a preliminary one does not depend so much on the degree of *importance* which it may assume during the hearing of the case,[10] as upon the circumstance, that the whole case has been disposed of, on the basis of that finding, without the necessity of deciding the other points in the case.[11] A suit may be dismissed or decreed on a preliminary point.[12]

543. **(1) ILLUSTRATIVE CASES.**—In *Sheoambar Singh* v. *Lallu Singh*,[13] where the lower Court had decided the preliminary question of the plaintiff's status to sue as the heir of a deceased, and by reason of the view taken by the Court upon the point of status, the rest of the case was not tried upon the merits, the order of remand was held to fall under S. 562, of the code of 1882, (now O. 41, R. 23). Similarly, in *Janki* v. *Nand Ram*,[14] where the lower appellate Court had not entered into some pleas of fact on which the suit had been defended, owing to the view of law which that Court took as to the absence of the plaintiff's right to maintain the action, the decree of the lower appellate Court being set aside, the High Court remanded the case to the lower appellate Court, for adjudication upon the merits of the other pleas set up by the defendants-respondents.

(2) Other instances of points the decision of which avoids the necessity for the full hearing of the suit, are the following:— that a suit is barred by the rule of *res judicata*,[15] or by the events of an earlier suit,[16] or, that the suit is barred by the law of limi-

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(9) 2 P.R. 1908 (F.B.).

(10) *Seenayya* v. *Mangammal*, 99 I.C. 974=1927 Mad. 1159.

(11) *Matadin* v. *Jamnadas*, 27 All. 691; and *Malayath Rama Nayar* v. *Krishnan Nambudri*, 69 I.C. 828 F.B. (F.N. 7, above).

(12) *Rahim Baksh* v. *Ram Nath*, 2 A.L.J. 477 (479)=1905 A.W.N. 164; *Mababir Prasad* v. *Mahadeo Dat*, 13 All. 386=11 A.W.K. (1891), 143, *Mt. Islam Fatuna* v. *Zamuddin*, 39 I.C. 951; *Bhavan Lallu* v. *Umar Mahomed Bhaiji*, 100 I.C. 1004=51 Bom. 43=1927 Bom. 129=29 Bom.L.R. 97, also see, *Zabirul Said Alvi* v. *R. S. Setti Lachhmi Narayan*, 1931 P.C. 107=131 I.C. 316=35 C.W.N. 612=60 M.L.J. 648=33 M.L.J. 723 =14 N.Z.J. 71=27 N.L.R. 139=33 Bom.L.R. 925=1931 M.W.N. 748 (P.C.).

(13) 9 All. 26 (Note), 30 (See F.N. 4, above).

(14) 11 All. 194 (F.B.) at p. 223=9 A.W.N. (1889) 30=13 Ind. Jur. 347.

(15) *Tarakant Puddomoney*, 10 M.I.A. 476, P.C.=5 W.R. 63 (66).

(16) *Ramaswami Pillai* v. *Narayanswami Pillai*, 86 I.C. 548=1925 Mad. 483=48 M.L.J. 100=21 L.W. 318=(1925) M.W.N. 82.

tation,[17] or by any other rule of law;[18] that the Court has no jurisdiction, *i.e.*, under the Estates Land Act;[19] that the evidence tendered was inadmissible;[20] or that the document produced required stamp duty and penalty;[21] or, was inadmissible for want of registration;[22] that on the plaintiff's evidence there is no case for the defendant to answer;[23] that in a libel suit there is no proof of publication;[24] or that the plaint requires amendment.[25]

(3) Where the trial Court in a suit by the assignee of a mortgage to enforce the mortgage rested its decision on the question of the receipt of consideration in favour of the plaintiff on the ground of estoppel, and disallowed evidence regarding the question and the appellate Court differing from the trial Court remanded the case for disposal on the merits, it was held that the suit had been disposed of by the trial Court on a preliminary point of estoppel, as evidence was thereby disallowed on the main issue, and all the other issues had been decided in favour of the plaintiff.[26] There are numerous examples in reported cases of a preliminary point, which is a matter preliminary to the general determination of the suit which the parties bring before the Court for decision. For instance, where the Court held that there was a valid award which decided the matter in dispute, and, therefore, the merits of the dispute could not be gone into;[27] or, that the case raised by the plaintiff at hearing was different from that raised in his plaint, and the suit should be dismissed without trial on the merits;[28] or, that there is nothing tangible upon which the claim is based, and must be dismissed;[29] or, that there is an alterior notice behind the application which cannot proceed;[30] or, that the plaintiff has no

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(17) *Tarakani Puddomoney*, 10 M.I.A. 476 (P.C.)=5 W.R. 63 (66), also see *Baranagare Jute factory* v. *Rajkumar Rai*, 1 I.C. 785 (787) =13 C.W.N. 724; and, *Raman Nayyar* v. *Krishnan Nambudri*, 69 I.C. 828 (F.B.)=45 Mad. 900 (F.B.).

(18) *Sabir Khan* v. *Ram Lukhee*, 10 W.R. 438 (439).

(19) *Ram Nayyar* v. *Krishnan Nambudri*, 69 I.C. 828 (F.B.)=45 Mad. 900 (F.B.)=1922 Mad. 505 (F.B.).

(20) *Agar Chand* v. *Babik Rai* (1887) A.W.N. 21.

(21) *Tricamji Damji* v. *Virji Kanji*, 67 I.C. 965=1923 Bom. 142 (145)=24 Bom.L.R. 820.

(22) *Sher Muhammad* v. *Miaw Ahmad*, 103 I.C. 298=1927 Lah. 592 (593).

(23) 69 I.C. 828 (832) F.B., *supra*.

(24) *Ibid.*

(25) 69 I.C. 828 (832) F.B., *supra*, also see *Agent, B.N.Ry.* v. *Behari Laldutt*, 90 I.C. 426=1925 Cal. 716 (717)=52 Cal. 783. (Plaintiff's suit defective as Defendant was misdescribed).

(26) *Narayanswami Aiyar* v. *Venkatarama Aiyar*, 95 I.C. 264= (1926) M.W.N. 315=50 M.L.J. 511=23 L.W. 749=1926 Mad. 808.

(27) *Krishnan Chetti* v. *Muthu Pallandi*, 22 Mad. 172 (173), citing 16 Mad. 207.

(28) *Fakir Apa* v. *Rayappa*, 1884 B.P.J. 128.

(29) *Sheoambar Singh* v. *Lallu Singh*, 9 All. 26 (30).

(30) *Surendra Nath* v. *Susil Kumar*, 134 I.C. 1063=1931 Cal. 604 (606)=35 C.W.N. 775.

cause of action;[31] or, that his suit or appeal has abated.[32] In all these cases, a reversal of the decision of trial Court, on appeal, or second appeal, required a decision on the other points.

544. (1) PRELIMINARY POINT WHETHER MAY RELATE TO THE MERITS OF THE CASE—Conflict of views.—It has been noticed above that Plowden, J.'s definition of a preliminary point, in the case of *Khalas* v. *Kalyan Singh*,[33] which was followed by the Punjab Chief Court, in *Nand Lal* v. *Gurditta-mal*,[34] confines a preliminary point to "a point collateral to the merits of the case, the decision upon which in one way may put an end to the case, and in another way, leaves a subsisting case upon the merits". Accordingly, where the first Court finding that the plaintiff had relinquished the property in suit, by executing a receipt produced by defendant No. 1, had dismissed the suit, but the appellate Court holding the receipt inadmissible for want of registration, reversed the decree, it was held that this finding was really one of law, though in one sense it related to the merits of the case, and did not cover the whole case. It was held, therefore, that the decision of the first Court was not on a preliminary point so far as defendant No. 1, was concerned, but was so as regards defendants 2 and 3, and had to be treated as such for the whole case. Where the point decided was the main issue of fact in the whole case, and not collateral to the merits;[35] or, where the decision as regards the validity of an agreement, was not in any way collateral, to the merits of the case, but part of the merits,[36] the Punjab Chief Court, took the view that the remand could not be under O. 41, R. 23, Civil Procedure Code. A similar view was taken by Chitty, J., in the Calcutta case of *Abdul Karim v. Fayez Buksh*[37] where the two principal issues were (1) whether the plaintiff had title, and (2) whether, if so, he was entitled to *kha's* possession, and the trial Court held that the plaintiff had no title, and so dismissed the suit without dealing with the question of *kha's* possession, and the lower appellate Court found that the plaintiff had title and after setting aside the decree of the trial Court, remanded the case to decide the question of *khas* possession. Coxe, J., was not in favour of a remand under O. 41, R. 25, as held by Chitty, J., but he was not prepared to record a formal dissent. The MADRAS HIGH COURT, has taken a like view in the case of *Zamorin of Calicut* v. *Karnavan Gopalan Nair*,[38] where the decision of the trial Court on the right of the plaintiff to the perpetual allowance claimed was based both on the bar by *res judicata*, and on merits; and, the lower appellate Court, reversing the judgment on both the points, remanded the suit for retrial. It

(31) *Kanakammal* v. *Rangachariar*, 20 Mad. 25 (27)=6 M.L.J. 259.
(32) *Baiful* v. *Adesang*, 26 Bom. 203=3 Bom.L.R. 736 (738).
(33) 109 P.R. 1887 (F.N. 8, *ante*).
(34) 99 P.R. 1902=141 P.L.R. 2.
(35) *Ali Muhammad* v. *Ralla Ram*, 157 P.L.R. 1903.
(36) *Telu Ram* v. *Lachhu Ram*, 49 P.L.R. 1905.
(37) 9 I.C. 224.
(38) 30 Mad. 203.

was held that the issue dealt with was an integral and vital part of the merits of the plaintiff's suit, and was not a preliminary point. In the case of *Athappa Chetty* v. *Ramanathan Chetty*,[39] the expression preliminary point was held to connote a determination not affecting the merits of the case. According to this view, a suit cannot be said to have been disposed of on a preliminary point, where, in a suit for ejectment and damages, the Court finds that the title alleged is not established;[40] or, where in a suit for mesne profits the suit is dimissed because the defendant was not in possession during the period in question.[41]

545. THE OPPOSITE VIEW.—The prevailing view, is to be found in the leading case of *Ramachandra Joshi* v. *Hazi Kassim*,[42] where it was held that a preliminary point may either be collateral to the merits which precluded the determination of the case altogether, or some particular question which, though relating to the merits, precluded their general determination. The Madras Full Bench view in the case of *Raman Nayar*, v. *Krishnan Nambudri*,[43] likewise does not restrict the "preliminary points" to those strictly independent of the merits: and thus, it differs from the view taken in *Anthappa Chetty* v. *Ramanathan*,[44] and follows the Allahabad view.[45] The Full Bench view, has been followed in the recent Madras case of *Alagammal* v. *Sadasiva*,[46] where in a suit for possession an issue was raised whether the plaintiff was entitled to an unconditional decree for possession or whether the defendants were entitled to redeem. The trial Court held that the defendants were not entitled to redeem, and gave the plaintiff an unconditional decree for possession. On appeal, the Appellate Court held that the defendants were entitled to redeem, and remanded the case for determining the amount payable on redemption and for disposal of suit according to law. This decision of the trial Court was held to be a decision on a preliminary point, justifying a remand under O. 41, R. 23. It has already been noticed that the view of Plowden, J., in 109 P.R. 1887, has been dissented from in the Full Bench case of *Abdul Gafar Khan*, v. *Muhammad Ziauddin*.[47] This may be illustrated by the following specific instances. The factum of adoption, when a plaintiff sues on the strength of an adoption, or of a will, when a claim is founded on it, or of a partnership, when plaintiff asks for an account on the allegation of being a partner would be a preliminary point. Similarly, in a suit for pre-emption in respect of the sale of a house

(39) 53 I.C. 417=10 L.W. 359=37 M.L.J. 536.

(40) *Debi* v. *Bunyadali*, 1905 A.W.N. 157.

(41) *Chuni Lal* v. *Mohiji*, 1 C.W.N. 340.

(42) 16 Mad. 207.

(43) 19 I.C. 828 (F.B.)=45 Mad. 900 (F.B.)=1922 Mad. 505 F.B. (F.N. 7, above).

(44) 53 I.C. 417=L.W. 359=37 M.L.J. 536.

(45) *Ram Narain* v. *Bhawani Din*, 9 All. 29 (Note) 30, and *Muhammad Allahdad Khan* v. *Muhamad Ismail Khan*, 10 All. 289.

(46) 129 I.C. 47=1930 Mad. 1017=32 L.W. 843=(1930) M.W.N. 1021=60 M.L.J. 72.

(47) 2 P.R. 1908 F.B. (F.N. 9, above).

in a town, the question of custom whether proved to exist, would be a decision on a preliminary point, as when the Appellate Court finds the custom proved, it may completely remand the case.[48] Other instances may be found in cases where the question as to the factum,[49] or the *validity* of a contract,[50] or the validity of an award,[1] has been treated as a preliminary point in the suit. A question whether a lease had been obtained by undue influence, was treated as a preliminary point, where by reason of a decision of this issue, there was no necessity for consideration of the other issues arising in the case.[2] A question of *locus standi* of plaintiffs-reversioners contesting an alienation by a male proprietor in the presence of a minor adopted son of the deceased,[3] and, a question as to maintainability of a suit for maintenance on ground of title[4] have been held to be preliminary points, as the reversal of the lower Court's finding, led to remand for a fresh decision on the other issues.

546. **SUIT DISMISSED, OR DECREED ON PRELIMINARY POINT.**—The question whether a point is a preliminary one does not depend on the fact that it has led to the dismissal of the suit without going into the merits of other questions in the case. A suit may be disposed of on a preliminary point either by its dismissal, or by its being decreed in favour of the plaintiff. For example, where a decree is passed in plaintiff's favour on the basis of an award;[5] or, under the Oath Act, with reference to the depositions of a certain person appointed by agreement of parties as a referee;[6] or, where a final decree has been passed upon the report of a Commissioner who had been superseded;[7] or, upon the alleged consent of parties to a judgment by the Court;[8] or, upon the plea of an estoppel of a tenant sued under a rent-note, from questioning the illegality of the transaction.[9]

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(48) *Ibid.*

(49) *Fernandez* v. *Sylvester Souza*, 61 I.C. 829=1921 Mad. 118=13 M.L.W. 54.

(50) *Meghan Dube* v. *Pran Singh*, 30 All. 63 (66)=5 A.L.J. 14=1908 A.W.N. 10.

(1) *Matadin* v. *Jamna Das*, 27 All. 691 (694)=1905 A.W.N. 159=2 A.L.J. 685, also see *Radha Kant Misser* v. *Jalladhar Jha*, 37 I.C. 844 (Pat.).

(2) *Rachugir* v. *Raghunath Gir*, 41 I.C. 202=2 P.L.W. 23=2 P.L.J. 398; follows 27 All. 691 (694).

(3) *Parmanand* v. *Thikbu*, 30 I.C. 817=121 P.W.R. 1915=57 P.L.R. 1916.

(4) *Jiwa Singh* v. *Khazana*, 56 P.R. 1908=161 P.L.R. 1908=107 P.W.R. 1908.

(5) *Rahim Baksh* v. *Ram Nath*, 2 A.L.J. 477 (479)=1905 A.W.N. 164.

(6) *Mahabir Prasad* v. *Mahadeo Dat*, 13 All. 386=11 A.W.N. (1891) 143.

(7) *Mt. Islam Fatuna* v. *Zainuddin*, 39 I.C. 951.

(8) *Zahir ul Said Alvi* v. *Rai Sahib Seth Lachhmi Narayan*, 1931 P.C. 107=131 I.C. 316=35 C.W.N. 612=60 M.L.J. 648=33 M.L.W. 723 =14 N.L.J. 71=27 N.L.R. 139=33 Bom.L.R. 925=(1931) M.W.N. 748 (P.C.).

(9) *Bhavan Lallu* v. *Umar Mahomed Bhaiji*, 100 I.C. 1004=51 Bom. 43=1927 Bom. 129=29 Bom.L.R. 97.

547. PRELIMINARY DECREE.—An appellate Court, cannot legally remand a case under O. 41, R. 23, Civil Procedure Code, where it is bound to pass a preliminary decree on its finding on a particular point;[10] for example, where the Court finds that the plaintiff in a suit for possession, and mesne profits, is entitled to a decree for possession:[11] or, in a suit for partition, and accounts, to a preliminary decree for partition, of property, and for accounts, before sending down the case for partition by metes and bounds, and for amount due to the plaintiff on accounts being taken.[12]

548. DECISION ON ALL THE ISSUES.—Under S. 562 of the Code of 1882, prior to its amendment by Act VII of 1888, a suit could not be remanded, if the lower Court had recorded evidence on all the issues. Cases under the old Code of 1882, as it stood prior to the amendment are not at all helpful.[13]

Under the amended Code of 1882, and the Code of 1908, it is immaterial whether the Court has recorded evidence on all the issues, so long as the entire suit has been disposed of on a preliminary point, that is to say, on the trial Court's finding on a preliminary issue without giving any decision on the other points arising in the case.[14] The ALLAHABAD High Court held in *Matadin* v. *Jamnadas*,[15] that it is competent to an appellate Court to remand a case under S. 562, Civil Procedure Code, (O. 41, R. 23), where the Court of first instance, having framed issues and recorded all the evidence, has decided the suit with reference to its finding upon one or more of the issues framed by it leaving other issues undecided. This was followed in *Meghandube* v. *Pran Singh*,[16] where an issue as to the document executed in favour of a minor being void was held to be a preliminary point. Similarly, the MADRAS High Court held, in the case of *Ramchandra Joshi* v. *Haji Kassim*,[17] that it is competent for an appellate Court to remand a case when the Court of first instance records evidence on all the issues, and at the final hearing decides the suit erroneously on some particular point without expressing any opinion on the

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(10) *Subbe Goundan* v. *Krishnamchari*, 68 I.C. 869=1922 Mad. 112 (113, 114)=15 L.W. 537=1922 M.W.N. 269=42 M.L.J. 372 =30 M.L.T. 217=45 Mad. 449. See and *Cf. Nand Kumar Singh* v. *Bilas Ram*, 43 I.C. 855=3 P.L.J. 116.

(11) *Ibid.* 45 Mad. 449, above, also see *Raghunathdas* v. *Abdul Subban Khair*, 5 A.L.J. 545 (546)=1908 A.W.N. 40.

(12) *Ibid.* Compare 39 I.C. 951; 129 I.C. 47=1930 Mad. 1017, also *Cf.* 43 I.C. 855.

(13) See *Chitale's* Civil Procedure Code, p. 2932, citing 7 All 167 (170); 9 All. 29, Note; 1882 A.W.N. 104; 9 Mad. 355 (356); 10 All. 289 (322); 17 All. 112; 10 W.R.Cr. 411; 10 W.R.Cr. 347; 20 W.R.Cr. 148; 22 W.R. 224; 1882 A.W.N. 5 (45); and 11 O.C. 169 (170).

(14) *Matadin* v. *Jamnadas*, 27 All. 691=1905 A.W.N. 159=2 A.L.J. 685; *Meghan Dabe* v. *Pran Singh*, 30 All. 63 (66)=5 A.L.J. 14 =1908 A.W.N. 10; also see, *Ramchandra* v. *Haji Kassim*, 16 Mad. 207 (209, 210); and, *Vengorayyan* v. *Ramasami Ayyan*, 19 Mad. 422 (423), also *Nawahu Ram* v. *Relu Mal*, 27 P.W.R. 1907.

(15) 27 All. 691=(1905) A.W.N. 159=2 A.L.J. 685.

(16) 30 All. 63 (66)=5 A.L.J. 14=1908 A.W.N. 10.

(17) 16 Mad. 207.

other issues.[18] The Allahabad, and Madras view above cited was relied upon by the Punjab Chief Court in *Nawhu Ram* v. *Relu Mal*,[19] where it was remarked by Johnstone, and Shahdin, JJ., that the Legislature must be taken to have intended some change in the law by expressly repealing the highly restrictive words of S. 562, Civil Procedure Code, 1882, by the Amending Act VII of 1888. The ruling by Plowden, J., in 109, P. R. 1887,[20] was not followed as proceeding upon old law.

549. Thus, where the Court, has adjudicated on *all* the issues involved, the disposal cannot be said to be on a preliminary point merely: and O. 41, R. 23, would be inapplicable.[21]

550. (1) Allahabad.—Where the trial Court has completely disposed of a suit on the merits, and on the pleadings, the appellate Court has no power to direct a remand for a trial of issues which do not arise from the pleadings.[22] It is not legitimate for an appellate Court to send back a case from its file, when the trial Court has really disposed of it on the merits, merely because the appellate Court differs radically from the conclusions of the Court below on the facts or because it considers that the discussion of the evidence in the trial Court's judgment is inadequate.[23] The Allahabad Full Bench, held in *Rameshur Singh* v. *Sheodin Singh*,[24] that the appellate Court acts without jurisdiction, and the remand order and all proceedings subsequent thereto will be *ultra vires* and illegal, where a Court of first instance decided a suit, not upon a preliminary point so as to exclude any evidence of facts, but upon the merits, and upon all the evidence tendered, and issues framed.

551. (2) Bombay.—The BOMBAY High Court, likewise, holds, that where a trial Court dismissed a suit on the merits, the appellate Court commits a material irregularity by requiring the lower Court to re-consider the whole case *de novo*, and write another judgment.[25] When a suit is not disposed of on a preliminary point, it is not com-

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(18) 16 Mad. 307, cited in 19 Mad. 422 (423), *supra*.

(19) 27 P.W.R. 1907.

(20) 109 P.R. 1887; *Cf.* 2 P.R. 1908.

(21) *Shyam Beharimal* v. *Maha Prasad*, 123 I.C. 324 (325)=(1930) A. L.J. 99=1930 All. 189 (Finding given by Sub-Judge upon all the issues); *Kallu* v. *Bhagirath Lal*, 40 I.C. 58 (59) (Decision by appellate Court on some of the issues, not on preliminary point); *Jagannath* v. *Bhawari*, 27 All. 167 (Trial Court deciding on all issues; remand of case for taking action under S. 202 of the Agra Tenancy Act, not held to be in accordance with S. 562, Civil Procedure Code, 1882); *Nural Gani* v. *Kazamaini*, 66 I.C. 922 =1923 Cal. 323 (324) (Decision by trial Court on merits); *Rani Dasi* v. *Asutosh Roy*, 6 I.C. 206. (No jurisdiction under S. 562, Civil Procedure Code to set aside decision of first Court not based on any preliminary ground.

(22) *Sheoji Kedar* v. *Ramanachari*, 119 I.C. 2=(1929) All. 962 Ind. Rel.

(23) *Lakhan Singh* v. *Babu Ram*, 88 I.C. 1021=23 A.L.J. 880= 1926 All. 65 (66).

(24) 12 All. 510 (F.B.)=10 A.W.N. (1890) 188.

(25) *Narayanbhat* v. *Akkubai*, 33 I.C. 576=18 Bom.L.R. 27, citing, *Venkata Varatha Thathachariar* v. *Ananthachariar*, 16 Mad. 299=3 M.L. J. 150; and, *Mallikarjuna* v. *Pathaneni*, 19 Mad. 479.

petent to a Court of appeal, under S. 562, Civil Procedure Code, 1882, to remand the case for a fresh trial.[26]

552. (3) Calcutta.—The CALCUTTA High Court has held that an order of remand was passed without jurisdiction, where the trial Court did not determine the case upon a preliminary issue, but heard and decided the suit upon the merits. Where an appellate Court without deciding any of the issues in a case, frames an additional issue, and reversing the decree of the lower Court, remands the case to the trial Court, the order cannot be validly passed under O. 41, R. 23, Civil Procedure Code.[27] Where the Court of first instance found that the plaintiffs had failed to establish their title to the land; it also found that the defendants had been in possession of the land for a long time, and that the plaintiffs had never been in possession; and, the appellate Court found that the plaintiffs had proved their title, a remand for the decision of question of limitation and possession, under O. 41, R. 23, was uncalled for.[28] Where the trial Court found the case of the defendants, in answer to a suit for enhancement of rent, not established, the appellate Court was held incompetent to remand the case for fresh decision, as the suit had been decided on the merits, and not erroneously disposed of on a preliminary point.[29]

553. (4) Lahore.—Where the trial Court has decided all the points in the suit, the LAHORE HIGH COURT holds that the remand order passed on appeal cannot be made under O. 41, R. 23, but should be made under R. 25.[30] There is no justification for a remand under R. 23, where the case has not been decided on a preliminary point:[31] and, the proper procedure would be, for the lower appellate Court to decide all the issues itself, though it could, if necessary, make an order of remand under R. 25, for findings on any issues which were left undecided by the Court of first instance.[32] Where all the issues raised in the pleadings have been decided by the trial Court, a remand under O. 41, R. 23, is not legal.[33] Where an appellate Court, without specifying the order or rule of the Civil Procedure Code, remands a case for redecision,

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(26) *Bai Shri Majirajba* v. *Maganlal Bhaishankar*, 19 Bom. 303.

(27) *Banka Behari Deb* v. *Birendra Nath Dutt*, 103 I.C. 864=1927 Cal. 850 (851)=55 Cal. 219=47 C.L.J. 69, also see *Radhakrishna* v. *Kamal Kamini*, 70 I.C. 547=1922 Cal. 456=35 C.L.J. 345, following *Mani Mohan Mandal* v. *Ramtaran*, 33 I.C. 329=43 Cal. 148. (Power of reversal and remand is limited to the position described in O. 41, R. 23, Civil Procedure Code).

(28) *Amrita Lal Mandal* v. *Bhutnath Mandal*, 41 I.C. 735 (Cal.).

(29) *Satis Chandra Bose* v. *Takurdas Mandal*, 39 I.C. 886=25 C.L.J. 473.

(30) *Ram Pratamal Mulchand* v. *Sant Ram*, 1932 Lah. 443=33 P.L.R. 487=139 I.C. 126.

(31) *Sultani Ram* v. *Munna Lal*, 1930 Lah. 181=123 I.C. 542; *Bicha Ram* v. *Jhandumal*, 96 I.C. 786.

(32) *Ram Lal* v. *Budhoomal*, 1927 Lah. 618 (619)=103 I.C. 537, *Maya Ram* v. *Tulsi Ram*, 91 I.C. 351=1926 Lah. 184.

(33) *Naranidas* v. *Naranidas*, 1927 Lah. 42=98 I.C. 906, also see *Kania Lal* v. *Narain Singh*, 50 I.C. 299.

and at the same time directs a refund of the Court-fee paid on the appeal, the order is one under R. 23, O. XLI, of the Civil Procedure Code.[34] The Punjab view is thus fully established that where the Court of first instance has disposed of all the issues framed, and the suit is not disposed of on a preliminary point, the order of remand under O. 41, R. 23, is bad in law.[35]

554. (5) Madras.—The Madras High Court has held that where the trial Court does not decide the suit on any preliminary point, but on all the issues raised, the remand is not under O. 41, R. 23, Civil Procedure Code.[36] An order of remand, by a Court of appeal, in a case where the trial Court has disposed of all the issues, and given a decree on those findings, cannot come within the scope of O. 41, R. 23, Civil Procedure Code: and a Court of appeal acts without jurisdiction if it remands "the whole case", while it wants further evidence only on certain issues. The proper course in such circumstances is to direct the trial Court to take the requisite further evidence, and submit it to the appellate Court for recording its own findings. The order of remand, being incompetent, where case is sent down for fresh decision although the trial Court has given findings on recorded evidence, the High Court could interfere in revision, if no appeal lay.[38] Where findings are given by the appellate Court on the main issues, it is material irregularity on the part of the appellate Court to remand the whole case to the Court of first instance for disposal. If a preliminary decree can be passed, it is the duty of the appellate Court to do so; otherwise, if the appellate Court records its findings on certain issues, it should ask the lower Court to try the issues which it has not decided.[39] The Madras view is that an order of remand contrary to the provisions of the Civil Procedure Code is not merely irregular, but illegal, and one that ought to be set aside at the instance of a party entitled to object to such a procedure, but there is no question of want of jurisdiction in any real sense of the term; and the doctrine of waiver by conduct applies.[40]

555. (6) Oudh.—The Oudh Judicial Commissioner's Court, has held in *Farzaud Ali* v. *Ekadshi*,[41] that when a suit is decided

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(34) *Miran Baksh* v. *Chanan Din*, 70 I.C. 1008=1923 Lah. 171 (172).

(35) *Loku Ram* v. *Setti Nirsidas Asa Nand*, 57 P.L.R. 1904.

(36) *Sundara Ramaiyer* v. *Sathianathan*, 102 I.C. 28=(1927) M.W.N. 286=1927 Mad. 1190.

(37) *Venkatarama Aiyar* v. *Sundaram Aiyar*, 92 I.C. 1045=(1926) M.W.N. 48.

(38) *Aduri Chelmayya* v. *Aduri Lakshmi Devamma*, 79 I.C. 857=1925 Mad. 171.

(39) *Pericherla Suryanarayana* v. *Ganapathy Raju*, 70 I.C. 655=30 M.L.T. 314=16 L.W. 593=1923 Mad. 113; followed, *Subbe Goundan* v. *Krishnamchari*, 68 I.C. 869=1922 Mad. 112=(1922) M.W.N. 269=15 M.L.W. 537=42 M.L.J. 372=45 Mad. 449=30 M.L.T. 217.

(40) Per Subramanya Ayyar, J., in the *Manager*, of the *Court of Wards* v. *Ramasami Reddi*, 28 Mad. 437=15 M.L.J. 292, also see *Mallikarjuna* v. *Pathaneni*, 19 Mad. 479 (order of remand held *ultra vires*, and illegal, where the trial Court had decided the case on the merits, not on a preliminary point).

(41) 73 I.C. 591=26 O.C. 10=10 A.L.J. 36=1923 Oudh 177.

ex parte, and the appellate Court to which an appeal from the decree is preferred has jurisdiction to reverse the decree of the lower Court, and has also power to remand the suit for re-hearing. The Allahabad rulings in the cases of *Gokal Prasad-Har Prasad* v. *Ram Kumar*,[42] and *Kulsoomunnissa* v. *Ram Prasad*,[43] have not considered the Full Bench case of *Sadhu Krishna Ayyar* v. *Kuppan Ayyangar*,[44] and appear to have ignored certain provisions of the Code. The Code of Civil Procedure, it was held, "permits a remand by an appellate Court not only in the particular case set forth in O. 41, R. 23, Civil Procedure Code, but also in all cases where there has been any error, defect or irregularity which has vitiated the whole decision of the case, provided that procedure under O. 41, Rr. 24 and 25, does not meet the case."[45] However, "an order of remand cannot be made under O. 41, R. 23, unless the case has been disposed of without entering into the full merits by reason of a decision on law or fact which has prevented the case being tried to the end."[46]

556. (7) Patna.—According to Patna High Court, in *Chandrika Prasad* v. *Mithu Rai*,[47] where the Court of first instance decides a suit after recording finding on all the issues in the case, but the appellate Court after framing certain new issues remands the case for decision of those issues, the order of remand is not one under O. 41, R. 23, Civil Procedure Code,[48] nor a decree, but an order made in the exercise of inherent powers of the Court.[49] Where an issue is raised in the Court of first instance on a particular point, and the parties have adduced evidence upon the same, and there is a distinct finding of both the trial Court, and the first appellate Court upon that point, it is not open to the High Court to remand the case for a re-hearing upon the same point.[50] The case contemplated by O. 41, R. 23, Civil Procedure Code, is a case whether the Court from whose decree the appeal is preferred has disposed of the suit upon a preliminary point, and the decree is reversed on appeal, and not a case decided upon the whole evidence and upon all the issues that were raised.[1]

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(42) 64 I.C. 878=19 A.L.J. 971=44 All. 176=1922 All. 254.
(43) 67 I.C. 713=20 A.L.J. 321=44 All. 492=1922 All. 226.
(44) 30 Mad. 54=1 M.L.T. 268=16 M.L.J. 479 (F.B.).
(45) 73 I.C. 591=26 O.C. 10=10 A.L.J. 36=1923 Oudh 177.
(46) 73 I.C. 591=1923 Oudh 177, *supra*.
(47) 103 I.C. 722=6 Pat. 380=1927 Pat. 296.
(48) 103 I.C. 722=6 Pat. 380=1927 Pat. 296.
(49) *Ibid.*, also see, *Bala Ram* v. *Jagannath*, 92 I.C. 684=1925 Pat. 760. (Order of remand not confined to a preliminary point, but affecting the decision of the whole suit, held to have been made in the exercise of inherent powers): compare, *Bhadai Sahu* v. *Manadar Ali*, 52 I.C. 125=4 P.L.J. 645 (suit held disposed of on the preliminary point of maintainability, and the fact that the Court decided the other issues in the suit made no difference). This ruling does not appear to be a sound one.
(50) *Ganpat Rao* v. *Raj Kumar Singh*, 67 I.C. 494=1922 Pat. 575 (577).
(1) *Brij Mohan* v. *Deobhajan*, 55 I.C. 484.

557. (8) Rangoon.—Where the plaintiff having failed to produce his witnesses, his suit was dismissed and, on appeal the Court remanded the case for taking any evidence which may be offered by the plaintiff, but did not set aside the first Court's decree, the lower appellate Court's order was not under O. 41, R. 23, Civil Procedure Code, but was taken to have been made under its inherent powers.[2]

558. DISMISSAL OF SUIT ON PRELIMINARY POINT.—Where in a suit the first Court decides all the issues, but dismisses it on one issue, holding that the suit is not maintainable, and, the appellate Court holding that the suit is not bad on that account, remands the suit to the lower Court for fresh disposal on the merits, the order under R. 23, is not supportable. The proper course is for the Court to dispose of the appeal, under O. 41, R. 24, Civil Procedure Code, or, if the evidence is insufficient, to call for a finding from the subordinate Court under O. 41, R. 25, Civil Procedure Code,[3] Similarly, where the trial Court decided that a suit was barred by limitation, but at the same time also came to a definite decision on each of the other issues, the lower appellate Court, setting aside the finding as to limitation, could not legally remand the case for a second disposal.[4] The fact that the trial Court's decision on a preliminary point covered the decision on the remaining points does not justify its being held that the decision was only on a preliminary point. For example, where in a suit for arrears of rent against the defendants as thekadars, the trial Court held that the document of lease being registered in the wrong district was inadmissible in evidence, and there was no proof of the *theka,* and plaintiff was, therefore, not entitled to obtain rent; but, the appellate Court held that one of the defendants had admitted the fact, and, further that the claim could be treated as one for compensation for use and occupation, and the *thekanama* might be looked at for estimating the measure of compensation the order of remand under O. 41, R. 23 was unjustified.[5]

559. REMAND ON ADDITION OF PARTIES.—Where the trial Court did not dispose of the suit upon a preliminary point, but the order of the lower appellate Court, directing the addition of certain parties, was an order upon a point which is necessarily preliminary to the proper decision and trial of the suit, the order of remand under O. 41, R. 23, Civil Procedure Code, is not illegal.[6] But, where the trial Court did not enter into the merits of the case, but held that the plaintiff's suit could not proceed because of the defect in the description of the defendant, and it also found that

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(2) *Ashrof Ali* v. *Mahomed Morden,* 79 I.C. 482=1 Rang. 656=1924 Rang. 177.

(3) *Munusami Naicken* v. *Munusami Naicken,* 76 I.C. 1041=16 L.W. 979=1923 Mad. 227=1923 M.W.N. 11.

(4) *Abdul Rahim Khan* v. *Hari Raj Singh,* 22 All. 405=20 A.W.N. (1900) 157.

(5) *Ajodhia Singh* v. *Khusro Begum,* 74 I.C. 582=9 O. and A.L.R. 321.

(6) *Jadab Gobinda Singh* v. *Anath Bandhu Saha,* 5 I.C. 998=37 Cal. 171; citing *Habib Baksh* v. *Baldeo Prasad,* 23 All. 167.

the suit was barred under Ss. 75 and 77 of the Indian Railways Act, the decision of that Court must be taken to be a decision on a preliminary point. Consequently, an order of remand directing that "the case will go back to the lower Court for amendment of the title of the defendant company, and for a fresh trial: the Court-fee paid on the memorandum of appeal should be returned to the appellant," was held to be one purporting to be passed under O. 41, R. 23, Civil Procedure Code, though strictly speaking it was not in conformity with that rule.[7] In an analogous case, where the objection that the plaintiff panchayat had no *locus standi* was not put in issue in the trial Court, but the lower appellate Court set aside the decree of lower Court, and ordered a re-trial on an amended plaint, the order was held to be legal and proper, in which a refund of the Court-fee could be allowed under S. 13.[8]

560. REMAND DIRECTING AMENDMENT OF PLAINT. —The ALLAHABAD High Court held in *Farzand Ali* v. *Yusaf Ali*[9] that an appellate Court cannot order or allow a plaint to be amended, and cannot remand a case under S. 562 of the old Code (O. 41, R. 23, Civil Procedure Code, 1908), for the purpose of such amendment. This view was relied upon in the BOMBAY High Court, in the case of *Bai Shri Majirajba* v. *Maghanlal Bhaishankar*,[10] for holding that when a suit is not disposed of on a preliminary point, it is not competent to a Court of appeal to remand the case for a fresh trial. The MADRAS High Court agreed with the Allahabad case so far as to hold that there was no case for remanding the suit under S. 562, "since that section only authorizes a remand when the Lahore Court has disposed of the suit on a preliminary point so as to exclude any evidence of fact which appears to the appellate Court essential to the determination of the rights of the parties and the decree upon such preliminary point has been reversed in appeal;" but, the remand could be directed to the original Court to make the order correcting the misjoinder by returning the plaint for amendment.[11] Similarly, it was held in a later case, that an order for amendment of the plaint was had under S. 562, Civil Procedure Code (O. 41, R. 23), as the original Court had not disposed of the suit on a preliminary point.[12] The LAHORE HIGH COURT has likewise held that where an appellate Court holding that the plaint was vague and required amendment, the order of remand to the trial Court for a fresh decision after amendment of the plaint, could not be justified under O. 41, R. 23, though such an order could be made under S. 151, Civil Procedure Code.[13] This ruling was followed by the Madras High Court in *Muppava-*

(7) *Agent, B.N.Ry.* v. *Behari Lal Dutt*, 90 I.C. 426=52 Cal. 783=29 C.W.N. 614=1925 Cal. 716.

(8) *Mohammad Shafi* v. *Panchayat, Fatehgarh*, 100 I.C. 49=1927 Lah. 196.

(9) 2 All. 669=5 Ind.Jur. 268.

(10) 19 Bom. 303.

(11) *Lingammal* v. *Chinna Venkatammal*, 6 Mad. 239.

(12) *Krishnaya Navada* v. *Panchu*, 17 Mad. 187.

(13) *Mahmud Shah* v. *Talab Hussain Shah*, 73 I.C. 915=1924 Lah. 245 (246).

raju v. *Venthurumilli*[14] and the Madras case of *Karuppan* v. *Ethumalai*,[15] agrees with the above decision, holding that where after the original Court had disposed of a suit by trying all the issues before it, the order of remand by the appellate Court allowing an amendment of the plaint is one passed under the inherent powers of the Court, and not under O. 41, R. 23, Civil Procedure Code.

561. **DISPOSAL OF WHOLE SUIT ON PRELIMINARY POINT.**—The ALLAHABAD High Court held in *Banwari Lal* v. *Sammanlal*,[16] that S. 562, Civil Procedure Code (1882), authorizes a remand only where the entire suit and not merely a portion of it, has been disposed of by the Court below upon a preliminary point. That decision has been followed in several subsequent cases in the Allahabad High Court, and in other Courts.[17] The expression "disposed of the suit on a preliminary point" in O. XLI, R. 23, Civil Procedure Code, means "disposed of the whole suit on the preliminary point alone."[18] A decision to be on a preliminary point must cover the whole case; and no order of remand can be made under O. 41, R. 23, unless the trial Court had disposed of the whole suit on a preliminary point.[19] An order of remand with regard to a portion only of a suit is not within O. 41, R. 23, Civil Procedure Code.[20] If the decided, and undecided matter can be kept apart, a remand under O. 41, R. 23 is not absolutely bad in law.[21] The law does not contemplate two decrees being passed in one and the same case, and unless the decree of a subordinate Court is reversed as a whole upon the preliminary point, a remand under O. 41, R. 23, Civil Procedure Code, is not permissible.[22] An appellate Court cannot remand the case for decision *qua* one of the appellants, and uphold the decree as against the others, the almost inevitable result of such procedure being that eventually there would be more than one decree, and possibly conflicting decrees in the case.[23] It is not competant to an appellate Court to split up

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(14) 84 I.C. 965=48 Mad. 713=(1924) M.W.N. 922=47 M.L.J. 552=1925 Mad. 229=20 L.W. 711=35 M.L.T. 135.

(15) *Ibid.* 84 I.C. 965=48 Mad. 713=1925 Mad. 229, followed in 103 I.C. 670=1927 Mad. 859 (860), also see *Balla Mallayya* v. *Peddi Veerayya*, 100 I.C. 135=1927 Mad. 325=52 M.L.J. 90=25 L.W. 198=38 M.L.T. 15.

(16) 11 All. 488=9 A.W.N. (1889) 188.

(17) *Mahesh Prasad* v. *Ranjor Singh*, 27 All. 163 (165).

(18) *Vemi Reddi Seshi Reddi* v. *Nalappa Reddi*, 57 I.C. 800=11 L.W. 611.

(19) *Mt. Gendo* v. *Radhe Mohan*, 1932 Lah. 219=136 I.C. 559=33 P.L.R. 54. Also see *Nandlal* v. *Gurditta Mal*, 99 P.L.R. 1902 (Finding of trial Court as to receipt being inadmissible for want of registration did not cover the whole case).

(20) *Jawahir Lal* v. *Fatteh Mahon*, 97 I.C. 1=8 P.L.T. 9.

(21) *Harchand Dayaram* v. *Makund Ram Sukal*, 12 C. P. L. R. 119 (122).

(22) *Amolakshah* v. *Charudas*, 149 P.W.R. 1908.

(23) *Khan Muhammad* v. *Jalaluddin*, 3 P.R. 1892. Also see *Imdad Ali* v. *Ghulam Jilani*, 42 P.R. 1892 (Appellate Court cannot remand the case of one set of appellants and dismiss the appeal of other appellants).

the subject-matter of an appeal into two parts, and remand the case as to one portion, and reject the appeal as to the other portion. The proper course is to remand the case for further enquiry, and upon the return of the record to dispose of the whole appeal by a single order.[24] Therefore, where an appellate Court decides some of the issues in a case, and leaves the other issues to be decided by the trial Court, the case should be remanded under R. 25, and not under O. XLI, R. 23, Civil Procedure Code.[25]

562. REVERSAL OF DECISION OF LOWER COURT.— A case cannot be remanded under O. 41, R. 23, Civil Procedure Code, unless the appellate Court has reversed the decree under appeal, which was passed on a preliminary point.[26] The power to remand under R. 23, arises only if the suit has been disposed of, firstly, on a preliminary point,[27] and secondly, on the definite reversal of the decision of lower Court.[28] It is not a good ground for passing an order of remand, under this rule, to say that the preliminary issue has been decided by the lower Court on a wrong view of burden of proof, unless the appellate Court also finds that the decision was wrong.[29] It is not sufficient that the appellate Court reverses the decree of the Court below, without reversing the decision of the trial Court on the preliminary point or points.[30] Where the appellate Court is not definitely prepared to reverse the finding of the first Court that the suit was barred by limitation, but is of opinion that in the event of finding that a certain person was not in possession on a particular date the suit was still liable to be dismissed on the ground of limitation, the proper procedure is under R. 25, and not R. 23.[31] But where the finding of the lower Court, is reversed, a remand under this rule is not had merely because the decision of the appellate Court is made subject to a further finding of fact in the lower Court.[32] However, where the trial Court dismissed the suit as a result of its decision on some of the issues, where evidence was led in the whole case, and the appellate Court without deciding any of the issues remanded the case directing that the lower Court should record his findings on all the issues, the order of remand was bad in law.[33]

563. REMAND FOR RE-TRIAL, OUTSIDE O. 41, R. 23.— A case may be sent down for re-trial apart from the provisions of O. 41, R. 23, Civil Procedure Code. The views of different High Courts on this question may be noticed in some detail, as it has a

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(24) *Manga* v. *Gurjan*, 82 P.R. 1877.

(25) *Kallu* v. *Bhagirath Lal*, 40 I.C. 58 (59).

(26) *Dattaji Rao* v. *Nilkanth Rao*, 28 I.C. 485 (486)=39 Bom. 352=17 Bom.L.R. 187.

(27) *Maya Ram* v. *Tulsi Ram*, 91 I.C. 351=1926 Lah. 184 (185).

(28) *Habibullah* v. *Lalta Prasad*, 17 I.C. 94=34 All. 612.

(29) *Ibid.*, 17 I.C. 94, *supra*.

(30) *Srinivas Raghava* v. *Srinivas Raghava*, 110 I.C. 692=1928 Mad. 1200.

(31) *Ramlal* v. *Tirbeni Sabai*, 26 I.C. 454.

(32) *Tricamji Dambji* v. *Virji Kavji*, 67 I.C. 965=1923 Bom. 142 (145)=24 Bom.L.R. 820.

(33) *Umar Din* v. *Umar Harat*, 103 I.C. 119=1927 Lah. 886.

direct bearing on the question of refund of Court-fees, which is optional under S. 151, Civil Procedure Code, and compulsary under O. 41, R. 23, Civil Procedure Code.

564. Allahabad.—In *Mt. Umme Khair* v. *Azizali*,[34] a remand for re-trial was made by the Allahabad High Court, under S. 151, Civil Procedure Code, where both the judgments of the trial Court, and the lower appellate Court were unsatisfactory, and the High Court decided to wipe out the whole proceedings. Where there is no section of the Code of Civil Procedure strictly applicable to the circumstances of a case, the High Court is warranted *ex debito justitiae* in setting aside all proceedings of both Courts below, and in directing the Court of first instance to retry the case.[35] But the question is not altogether settled in the Allahabad cases whether a similar power to order a remand for retrial can be validly exercised by the lower appellate Courts. Such a power is recognised by S. 151 of the Code of Civil Procedure, but "the policy of the Allahabad High Court has always been to allow as wide a meaning as is reasonably possible to the provisions of O. 41, R. 23, Civil Procedure Code," and to presume that the lower appellate Court has acted simply under those provisions.[36] In *Habib Baksh* v. *Baldeo Prasad*,[37] a case under the Code of 1882, S. 564, was held not to preclude an appellate Court from remitting a case to a Court of first instance under circumstances necessitated by the other provisions of the Code, as to addition of parties, or amendment of the plaint. The Full Bench of the Allahabad had held in *Rameshar Singh* v. *Sheodin Singh*,[38] that where the first Court had decided the suit, not on a preliminary point, but upon the merits, and on all the evidence, and on all the issues, the lower appellate Court had no jurisdiction to remand the case for fresh decision, and that having regard to S. 564, both the remand order and all the proceedings subsequent thereto were *ultra vires* and illegal. This S. 564 has now been removed from the new Code and the provision in S. 151, Civil Procedure Code, recognises the inherent power of Court in cases not covered by other provisions. But as noticed above, the case has not come before any Full Bench of the Allahabad High Court for consideration. However, see in this connection the amendment by Allahabad High Court to O. 43, R. 1 (u) Civil Procedure Code.

565. Bombay.—The Bombay High Court, holds that the removal of S. 564 of the old Civil Procedure Code, had no other object but to withdraw those restrictive provisions of that section which in practice had been found so embarrassing.[39] The powers of

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(34) 80 I.C. 183=1922 All. 47.

(35) *Durga Dibal Das* v. *Anoraji*, 17 All. 29=(1894) 14 A.W.N. 190.

(36) *Gokul Prasad Har Prasad* v. *Ram Kumar*, 64 I.C. 878=44 All. 176=1922 All. 254 (256)=19 A.L.J. 971. (High Court possesses wider powers of supervision not necessarily possessed by the Courts of the District Judges.")

(37) 23 All. 167.

(38) 12 All. 510 (F.B.).

(39) *Narottam Raja Ram* v. *Mohanlal Kabandas*, 17 I.C. 891=37 Bom. 289=14 Bom.L.R. 1154.

the appellate Court as regards remand are not now limited to the specific case mentioned in O. 41, R. 23, and that the Court, under its inherent jurisdiction, may order a remand to do what is right and necessary in cases other than those covered by that order, if justice so requires it.[40]

566. Calcutta.—The CALCUTTA HIGH COURT holds that the powers of an appellate Court to remand are not restricted to the case specified in O. 41, R. 23 of the Civil Procedure Code; and the Court may by reason of its inherent jurisdiction vested in it by S. 151 of the Code, make an order of remand in any case other than the case specified in O. 41, R. 23 if it be necessary for the ends of justice to do so.[41] An appellate court has general powers of remand under S. 151, Civil Procedure Code, and its powers are not restricted to cases specified in O. 41, R. 23 of the Code.[42] Thus, the remand may be directed even where the decision appealed against was not on a preliminary point, as the power of appellate court is wider than that indicated in O. 41, R. 23.[43] Where the order passed is not in strict conformity with O. XLI, R. 23, the form of the order may indicate that it purports to be passed under that rule, by directing that the Court-fee paid on the memorandum of appeal should be returned to the appellant, as such an order can only be passed under S. 13 of the Court-Fees Act in a case where the remand is made under O. XLI, R. 23.[44] However, the mere fact that an order of remand contravenes the provisions of O. XLI, R. 23 of Civil Procedure Code does not mean that it is made under the inherent powers of the Court.[45] An order of remand under R. 23, passed in a case where the proper order should be under R. 25, will not be deemed without jurisdiction, having regard to the inherent powers of the Court to make a remand.[46] The power of an appellate Court to order a retrial under S. 151, will be exercised only in exceptional circumstances, and where the Code does not provide an adequate procedure;[47] yet the ends of justice require this to be done.[48] The leading case on the subject, is the Full Bench decision in *Abdul Karim* v. *The Allahabad Bank*,[49]

(40) *Jethalal Girdhar* v. *Varajlal Bhaishankar*, 63 I.C. 478=1922 Bom. 267 (270)=46 Bom. 184=23 Bom.L.R. 769; cites *Abdul Karim* v. *Allahabad Bank*, 41 I.C. 598=44 Cal. 929=26 C.L.J. 49=21 C.W.N. 877 (F.B.).

(41) *Umesh Narain Chowdhry* v. *The Secretary of State*, 87 I.C. 575 =1925 Cal. 1157 (1159): follows *Abdul Karim* v. *Allahabad Bank*, 41 I.C. 598=44 Cal. 929=26 C.L.J. 49=21 C.W.N. 877 (F.B.).

(42) *Gnanendra Mohan* v. *Prafullananda*, (1927) 106 I.C. 542=1928 Cal. 812 (814)=32 C.W.N. 101.

(43) *Bisa Nath* v. *Tara Nath*, 72 I.C. 588=1923 Cal. 385.

(44) *Agent, B. N. Ry.* v. *Behari Lal Dutt*, 90 I.C. 426 (427)=52 Cal. 783=29 C.W.N. 614=1925 Cal. 716 (717).

(45) *Sashi Mukhi Dasi* v. *Abinath Chandra Halder*, 80 I.C. 172=1922 Cal. 279.

(46) *Atul Chandra Veal* v. *Kobadali*, 64 I.C. 436.

(47) *Radha Kant* v. *Prakash Chandra*, 64 I.C. 599.

(48) *Musri Sahu* v. *Vishu Nath*, 52 I.C. 985=29 C.L.J. 419; *Bejoy Krishna* v. *Jiban Krishna*, 46 I.C. 333=27 C.L.J. 596.

(49) 41 I.C. 598 (600)=21 C.W. N. 877=26 C.L.J. 49=44 Cal. 929 (F.B.); also see *Susthir Bala* v. *Chandra Kumar*, 36 I.C. 813; *Ross* v.

which reviews the previous case law, and holds that the powers of an appellate Court as regards remand are not limited to the specific case mentioned in O. XLI, R.3, Civil Procedure Code. But a court, in the exercise of its inherent jurisdiction to do what is right and necessary, may order a remand in cases other than those covered by O. XLI, if justice so requires it.

567. **Lahore.**—According to the view taken in Lahore High Court, no order of remand can be made under O. XLI, R. 23, unless the trial Court has disposed of the whole suit on a preliminary point.[50] Where a remand does not satisfy the provisions of O. 41, Rr. 23 and 25, it should be deemed to be passed under S. 151 of the Code,[1] but, a remand cannot be construed to be one under S. 151, Civil Procedure Code, simply because the Court has failed to express that the remand is under R. 23, or R. 25 of O. 41 of the Code.[2] Where a Court while passing an order of remand does not pass an order for refund of Court-fees on the memorandum of appeal, the remand order cannot be deemed to be one under O. 41, R. 23.[3] But, where a remand order is accompanied by an order for refund of Court-fee, the remand should be construed to be one under R. 23, O. XLI, Civil Procedure Code.[4] However a Court remanding a case under S. 151 is equally competent to order a refund of Court-fee paid on the memorandum of appeal.[5] S. 13, Court-Fees Act makes it obligatory on the Court to refund the Court-fee on the memorandum of appeal where a suit is remanded under O. 41, R. 23. This provision of law does not prohibit a Court ordering a remand under its inherent powers and directing a refund of Court-fee on the memorandum of appeal inasmuch as the inherent powers contained in S. 151, which permit a Court to make a remand in cases other than those falling under O. 41, also permit of the Court ordering a refund of the fee paid on the memorandum of appeal.[6] The High Court has inherent powers to grant

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Scriven, 34 I.C. 235=20 C.W.N. 1192=43 Cal. 1001; *Meah Uzirali Sardar* v. *Savai Bchara*, 32 I.C. 791=20 C.W.N. 547=43 Cal. 938 (Power to remand the whole case when an amendment of plaint is granted in appeal, and when parties are added): *Upendra Chandra Mandal* v. *Shaikh Sabhan*, 11 I.C. 183=15 C.L.J. 6 (addition of parties) and *Tohra Bibi* v. *Zabeda Khatoon*, 7 I.C. 75 (addition of parties).

(50) Per Tek Chand, J.—*Mt. Grudo* v. *Radhe Mohan*, (1932 Lah. 219 =33 P.L.R. 54=136 I.C. 559); also see 1933 Lah. 135=141 I.C. 400 (F.-n. 5).

(1) Per Jailal, J.—*Harnam Singh* v. *Indarsingh*, (1932 Lah. 311=33 P.L.R. 285=138 I.C. 202).

(2) *Mt. Sahibji* v. *Mohammad Sarwar Khan*, 106 I.C. 842=9 L.L.J. 543=29 P.L.R. 300=1928 Lah. 116.

(3) *Ibid.*; 1932 Lah. 311=138 I.C. 202, *supra*.

(4) *Mt. Sahibji* v. *Mohammad Sarwar Khan*, 106 I.C. 842=9 L.L.J. 543=28 P.L.R. 300=1928 Lah. 116.

(5) 1932 Lah. 219=136 I.C. 559=33 P.L.R. 54, *supra* followed in *Central Bank of India* v. *Thakardas Tulsiram* (Tapp, J.)—1933 Lah. 135=141 I.C. 400.

(6) *Central Bank of India* v. *Thakardas Tulsi Ram*, 1933 Lah. 135=141 I.C. 400 (follows 1932 Lah. 219, *supra*.) cf.: *Punjab Ram* v. *Jowaya* (Dalip Singh, J.). *Held*, that where the remand is under O. 41, R. 23 the decision being on a preliminary point, the stamp in the appeal should be

a certificate to a party who has *bona fide* paid excess Court-fee so as to enable him to get a refund from the revenue authorities.[7] It has been pointed out in the case of *Parma Nand* v. *Bashir Ahmad*[8] that under the Code of 1882 the powers of remand were limited, and restricted by the provision of S. 564. That particular section is not reproduced in any form in the Code of 1908, and it is thus clear that the powers of remand have been widened by the omission of that restrictive section. It is therefore, not open to dispute that under the present S. 151 of the Code, an appellate Court may remand the cases not directly covered by Rr. 23 and 25 of O. 41, as the inherent power of the Court extends to such matters,[9] though recourse should be had to this section only in very exceptional cases.[10] Where an appellate Court finds that the whole case has been badly conducted in the trial Court, that matters have been put in issue which were not raised in the pleadings, and the case has been decided upon questions not raised, it can reverse the decree of the lower Court, and remand the case under its inherent powers with directions to try the case *denovo*.[11] The powers of an appellate Court as regards remands are not restricted to cases specified in O. 41, R. 23, Civil Procedure Code, and by reason of its inherent jurisdiction the Court may remand in cases other than the case specified in O. 41, R. 23, if it be necessary for the ends of justice:[12] and indeed various circumstances may arise under which an appellate Court may not be able to decide a case completely, and may order a re-trial.[13] For instance, where a case was decided without hearing arguments, the Punjab Chief Court held that neither S. 562, nor S. 566, Civil Procedure Code, (O. 41, Rr. 23, 25) were applicable to a case of this kind, and that the Chief Court, however, had inherent jurisdiction to rectify errors, omissions, and defaults, which unless so rectified would result in serious miscarriage, or failure of justice.[14]

568. Madras.—The Madras High Court follows the well-established rule that even though the suit has not been disposed of on a preliminary issue, and O. 41, R. 23, Civil Procedure Code does not apply, yet the Court of appeal has inherent power to make

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refunded. So far as the appeal of the defendant was concerned, the remand was under S. 151 of the Code, and no refund was given).

(7) *Jowala Singh* v. *Ghulam*, 1933 Lah. 351=34 P. L. R. 1=142 I.C. 633.

(8) 1930 Lah. 224=31 P.L.R. 50=11 L.L.J. 507=122 I.C. 473.

(9) *Ibid.*

(10) 106 I.C. 842=29 P.L.R. 300=9 L.L.J. 543=1928 Lah. 116. (F.-ns. 2 and 4 above).

(11) *Babalsingh* v. *Surain Singh*, 103 I.C. 854=28 P.L.R. 679=9 L.L.J. 268.

(12) *Bhup Singh* v. *Prem Singh*, 76 I.C. 496=5 L.L.J. 384=1924 Lah. 362 (363): cites, 41 I.C. 598=44 Cal. 929; 43 I.C. 959=3 P.L. J. 253; 53 I.C. 417=37 M.L.J. 536; and 55 I.C. 484=1 P.L.T. 509.

(13) *Mt. Umri* v. *Shah Muhammad*, 74 I.C. 497=1924 Lah. 36 (37)= 5 L.L.J. 269 (Various circumstances may arise under which an Appellate Court may not be able to decide a case completely).

(14) 91 P.R. 1904=5 P.L.R. 1905.

a remand for re-trial under S. 151, Civil Procedure Code.[15] Where an appellate Court can pass a preliminary decree it is its duty to do so, and a remand as to matters which can be the subject-matter of the preliminary decree is not warranted.[16] An order of remand, where the decision of the trial Court is not on a preliminary point, will be treated as falling within S. 151 of the Code[17] which contemplates the exercise of powers *ex debito justitiae*, which are not conferred by the rules of the Code, to make a remand under conditions other than those mentioned in O. 41, R. 23.[18] Where an appellate Court adds a new party, it has inherent power to reverse the decree of the Court of first instance and remand the case for re-trial.[19]

569. **Nagpur.**—The Nagpur Judicial Commissioner's Court has held that where it is clearly apparent that the appellate Court cannot itself dispose of a suit on the merits by the adoption of the specific procedure mentioned in Rr. 24 to 29 of O. 41 of the Code, a remand for re-trial is not only permissible but obviously incumbent on the Court,[20] in exceptional circumstances.[21] However, the Nagpur Court holds that an appellate Court remanding a case is not justified in ordering refund of Court-fees except where the decision of the Court of first instance has been on a preliminary point only.[22]

570. **Oudh.**—The OUDH JUDICIAL COMMISSIONER'S Court has held, in *Farzand Ali* v. *Ekadshi*,[23] that the Code of Civil Procedure permits a remand by an appellate Court not only in the particular case set forth in O. XLI, R. 23, but also in all cases where there has been any error, defect or irregularity which has vitiated the whole decision of the case, provided that the procedure under O. XLI, Rr. 24 and 25, does not meet the cases. S. 151 cannot be invoked in any case unless a Court has jurisdiction to entertain the case.[24]

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(15) *Thirukaval Chetti* v. *Karia Goundan*, 119 I.C. 466=1930 Mad. 72 (73); also see *Balla Mallayya* v. *Peddi Veerayya*, 100 I.C. 135=38 M. L. T. 15=25 L.W. 198=52 M.L.J. 90=1927 Mad. 335 (336).

(16) *Subba Goundan* v. *Krishnamachari*, 68 I.C. 869=30 M.L.T. 217 =45 Mad. 449=42 M.L.J. 372=15 M.L.W. 537=1922 M.W.N. 269 =1922 Mad. 112 (114).

(17) *Ponagi Venkata Subbarayudu* v. *Zemindar of Nuzvid*, 60 I.C. 609 =12 M.L.W. 667, also see *Vemula Jambalaya* v. *Iskala Rajamma*, 15 I. C. 859, and *Kuppilan* v. *Kunjuvalli*, 9 I.C. 790=9 M.L.T. 373=2 M.W. N. 199.

(18) *Athappa Chetty* v. *Ramanathan Chetty*, 53 I.C. 417=10 M.L.W. 359=37 M.L.J. 536.

(19) *Antoni Juas Prabhu* v. *Ramakrishnayya*, 31 I.C. 263=2 M.L.W. 1034.

(20) *Ramdutta Shankarlal* v. *Preramchand*, 101 I.C. 281=1927 Nag. 192.

(21) *Hithoba* v. *Waman*, 42 I.C. 304.

(22) *Hithoba* v. *Waman*, 42 I.C. 304, *supra*.

(23) 73 I.C. 591=10 O.L.J. 36=26 O.C. 10=1923 Oudh 177.

(24) *Ibid.* also see *Ram Sewak* v. *Mt. Ram Dei*, 11 O.C. 264 (266)

571. Patna.—The PATNA HIGH COURT, also, has taken the view that under S. 151, Civil Procedure Code, an appellate Court has power to remand a case although it falls outside the scope of O. XLI of the Code.[25] The powers of an appellate Court as regards remand are not restricted to the cases specified in O. 41, Rr. 23 and 25.[26] A remand for re-trial is valid where an appellate Court has relied for its decision upon a document which is inadmissible,[27] or, where the trial has not been proper owing to some neglect on the part of the Court.[28] But, the inherent power to remand, under S. 151, Civil Procedure Code, should be exercised with the very greatest caution.[29]

572. Rangoon.—In *Ashrof Ali* v. *Mahomed Morden*,[30] where the decision of the trial Court was not on a preliminary point, and the decree of the trial Court was not set aside but the Court made an order of remand for taking any evidence that may be offered by the plaintiff, it was held by the RANGOON HIGH COURT, that the remand was not in conformity with sales 25 or 27 of the O. XLI, Civil Procedure Code, and must be taken to have been made under the appellate Court's inherent powers under S. 151, Civil Procedure Code read with O. XLI, R. 23, Civil Procedure Code. An appellate Court has the power to remand the case for the determination of a question of fact appearing to it to be essential to the right decision of the suit upon its merits.[31]

573. REFUND OF COURT-FEE ON REMAND.—(1) It has been noticed already that the provisions of O. 41, R. 23, are mandatory, and when a remand is made under this rule, the appellate Court is *bound* to order a refund of the Court-fee under S. 13 of the Court-Fees Act.[32] The language of S. 13, contemplates an order for refund by the appellate Court which remands the appeal. Consequently, where the whole appeal was allowed by the High Court against contesting defendants-respondents, the other respondents being *pro forma* parties and the plaintiff was held entitled to a refund on remand in second appeal, the High Court

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(25) *Bibi Aziz Fatema* v. *Syed Shah*, 58 I.C. 444=1920 P.H.C.C. 222.

(26) *Brijmohan Pathak* v. *Deobbanjan Pathak*, 58 I.C. 664=5 P.L.J. 147.

(27) *Sumitra Koer* v. *Ram Kair Chowbey*, 57 I.C. 561=5 P.L.J. 410 =1 P.L.T. 702=1921 P.H.C.C. 17.

(28) *Bishun Dutt* v. *Ramji Prosad*, 56 I.C. 834 (837).

(29) *Raghunandan Singh* v. *Jadunandan Singh*, 43 I.C. 959=3 P.L.J. 1932 A.L.J. 745.

(30) 79 I.C. 482=1 Rang. 656=1924 Rang. 177 (178).

(31) 127 I.C. 598=1930 Rang. 188 (189).

(32) See (F.-ns 9 to 11 above), 122 I.C. 485=1930 Lah. 441; 15 I.C. 910=15 C.L.J. 658; 45 I.C. 552=42 Bom. 363; 92 I.C. 926= 1926 Nag. 265; also see *Sher Mohammad* v. *Mian Ahmad*, 1927 Lah. 592= 103 I.C. 298; *Central Bank* v. *Thakardas Tulsi Ram*, 1933 Lah. 135=141 I.C. 400; *Harnam Singh* v. *Indar*, 1932 Lah. 311=138 I.C. 202=33 P.L. R. 285; *Mohammad Shafi* v. *Fatehgarh*, 100 I.C. 49=1927 Lah. 196 (197); and *Shanti Lal* v. *Agha Dost Mohd.*, 140 I.C. 56=1932 All. 641 (642)= 253=4 P.L.W. 450.

held that no refund could be allowed in respect of the Court-fee paid in the lower appellate Court, which had dismissed the appeal.[33]

(2) But, when the remand is made under the inherent jurisdiction of the High Court, under S. 151, Civil Procedure Code, the refund cannot be allowed according to NAGPUR and PATNA Courts;[34] but is permissible according to the LAHORE High Court, which is in favour of exercising its discretion in the matter of such refunds.[35]

(3) Where an appeal is remanded in part, the appellant is entitled to a return of the proportionate part of the Court-fee paid by him on appeal;[36] but where the decree appealed against is set aside against same of the respondents only, and is not completely allowed against all the respondents, O. 41, R. 23, does not apply, and a refund of the Court-Fee paid on memorandum of appeal is not allowed.[37]

574. **REFUND OF EXCESS FEE ALLOWED UNDER S. 151, CIVIL PROCEDURE CODE.**—The case-law has been reviewed in the recent cases of Lahore, and Madras High Courts, and also by the Chief Court, Oudh, and "it appears to be well settled that the Court has power under S. 151 to grant a certificate in cases not covered by Ss. 13, 14 and 15, Court-Fees Act." An early Bench of the CALCUTTA HIGH COUT, took an uncomprising view that no Court-fee can be recovered when paid in excess.[38] "But, there is a series of decisions in Calcutta itself, and by other High Courts, based on a still earlier decision of the Calcutta High Courts, in the matter of *G. H. Grant*.[39] which lay down that S. 151. Civil Procedure Code enables a High Court to order refund of Court-fee paid in excess when obvious injustice would be done if it were not re-paid."[40] A Court would assist a party to recover

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(33) *Kanhaiyalal* v. *Mahadei*, 1932 All. 550=140 I.C. 466=54 All. 523; and, *Kaulpati Kuar* v. *Kashi Prasad Singh*, 1934 All. 106=1934 A.L.J. 41.

(34) *Vithoba* v. *Waman*, 42 I.C. 304 (Nag.); *Jagannath* v. *Maruti*, 36 I.C. 241=12 N.L.R. 126; also see *Nand Ram* v. *Bilas Ram*, 43 I.C. 855 (856)=4 P.L.W. 100=3 P.L.J. 116; and *cf. Agent B. N. Ry.* v. *Behari Lal Dutt*, 52 Cal. 783=90 I.C. 426=1925 Cal. 716.

(35) *Bansi* v. *Jhamman*, 1930 Lah. 441 (442)=122 I.C. 485; *Mt. Gendo* v. *Radha Mohan*, 1932 Lah. 219=136 I.C. 559=33 P.L.R. 54; *Central Bank* v. *Thakurdas*, 1933 Lah. 135=141 I.C. 400; also see *Jowala Singh* v. *Ghulam*, 1933 Lah. 351=142 I.C. 633.

(36) See Proviso to the Section, also see In the matter of *Doorga Das Dutt*, Beng.L.R. Sup. Vol. 511=6 W.R. Mis. 65.

(37) In the matter of *Bhagwanti*, 39 I.C. 28=19 A.L.J. 671; compare *Kaulpati* v. *Kashi Prosad Singh*, 1934 All. 106=1934 A.L.J. 41.

(38) In the matter of *Parry Mohan Goobo*, 11 Beng. L. R. 312 (317), also see and *cf.* In the matter of *M. Syud Zoynooddeen*, 11 Beng.L.R.A. C. 370.

(39) (1870) 14 W.R. 47. (Held that where excess stamps had been filed in consequence of an over-valuation of the appeal, the surplus amount was ordered to be refunded): also see, *Probbas Kumar* v. *Nitharlal*, 84 I.C. 278=1924 Cal. 1054=28 C.W.N. 928.

(40) *Thammayya Naidu* v. *Venkataramanamma*, 1932 Mad. 438=139 I.C. 131=55 Mad. 641. Held in *Vijyalakshmi Ammal* v. *Srinivasa Iyengar*,

excess Court-fee erroneously paid under its own order, or under the orders of the Court subordinate to it.[41] The High Court decides judicially what is proper Court-fee, and then issues a certificate to the party that excess-Court fees has been levied. It still lies with the revenue authorities to decide whether or not they will refund the excess in the circumstances.[42]

575. The OUDH CHIEF COURT, has taken a similar view in *Mohammad Sadiq Ali Khan* v. *Ali Abas*,[43] holding that a Court has jurisdiction to order a refund of Court-fees in cases who do not fall within any of the Ss. 13, 14 and 15.[44] When an appeal was pending from the preliminary decree it is not necessary to file another appeal from the final decree and the result of the appeal in the preliminary decree would have governed the final decree as well; in such a case the appellant was held entitled to a refund of Court-fee paid on the final appeal.[45]

576. The LAHORE HIGH COURT, also held in the case of *Jowala Singh* v. *Ghulam*[46] that where an excessive Court-fee stamp of Rs. 173-8, had been used instead of one of Rs. 4, under a *bona fide* mistake of party, the appellant was allowed to put in a fresh stamp of the value of Rs. 4, and on his doing so the stamp sheets of the value of Rs. 173-8, were returned to him together with a copy of the Court's order, which he would present to the revenue authorities as tantamount to a certificate that there has been a *bona fide* mistake, and that the proper fee was only Rs. 4. This would enable him to obtain a refund under the rules passed under Government of India Notification No. 132, dated 11th January, 1888.[47] The Government has directed that excess court-fee stamps

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1934 Mad. 84=38 M.L.W. 983, citing, see *Harihar Guru* v. *Ananda Mahanty*, 20 I.C. 498=40 Cal. 365; *Girish Chandra Mali* v. *Girish Chandra Dutt*, 1932 Cal. 450; *Munnatal* v. *Ramchandra*, 1930 All. 471=122 I.C. 188=52 All. 546; *Chaudradhari Singh* v. *Tippan Prasad Singh*, (1918) 3 P.L.J. 452=46 I.C. 271; *Muhammad Roza* v. *Rajballa Bharat Singh*, (1928) 107 I.C. 320, and *Sassibubhan Mazumdar* v. *Manik Lal Chandra*, (1928) 107 I.C. 825 (Pat.) (Power of appellate Court to order refund of Court-fee illegally levied by lower Court.

(41) 1932 Mad. 438=139 I.C. 131=55 Mad. 641, *supra*; see and *cf.* *Bebee Syedun* v. *Syudallah*, W.R. Gap. 327 (329); an *Indar Sen Singh* v. *Rikhai Singh*, 30 All. 103=28 A.W.N. 31=5 A.L.J. 18; and *Katchi Rowther* v. *Nama Mahommad*, 28 I.C. 300 (refund of Court-fee in excess paid under order of Court.

(42) 1932 Mad. 438=139 I.C. 131=55 Mad. 641, followed in 1934 Mad. 84=38 M.L.W. 983.

(43) 1933 Oudh 170 (1)=7 Luck. 588=10 O.W.N. 292.

(44) *Ibid.* cites, 14 W.R. 47; 20 I.C. 498; also *Prabhkar Bhat* v. *Vishwan Bhat*, 8 Bom. 313 (F.B.); *Vishweshwar Sarma* v. *T. M. Nair*, 35 Mad. 567=10 I.C. 201.

(45) *Swami Dayal* v. *Muhammed Sherkhan*, 83 I.C. 829 (832)= 1925 Oudh 39, also see 24 I.C. 827=36 All. 532.

(46) 1933 Lah. 351=34 P.L.R. 1=142 I.C. 633.

(47) 1933 Lah. 351=34 P.L.R. 1=142 I.C. 633; citing 20 I.C. 498 =40 Cal. 365; 1932 Cal. 450=137 I.C. 791; 1932 Mad. 438=139 I.C. 131=55 Mad. 641; also see 122 I.C. 1930 All. 471; 3 P.L.J. 452=46 I.C. 271; also see *Fakir Muhammad* v. *Vali Muhammad*, 1927 Sind 192= 102 I.C. 193.

put in by mistake in matters of administration should be refunded. I.G. Notification No. 2025 of 1872, dated 17th September, p. 782; and I. G. Notification No. 132, dated the 11th January, 1888.

577. The RANGOON HIGH COURT, has also held that where there was an incorrect decree, against which there was an application for amendment, and for review, and the Court allowed the application for amendment, it had inherent power to order refund of Court-fee on application for review.[48]

578. REFUNDS NOT ALLOWED—Dismissal of appeal.— (1) There is no provision in the Court-Fees Act, or anywhere else, for refunding a Court-fee which has been deposited with the memorandum of appeal, or during the hearing of the appeal, when the appeal has been dismissed on the ground that a deficit in the Court-fee ordered to be paid has not been paid.[49] No refund can be granted where the appeal is dismissed on the ground that no appeal lay.[50] This does not conflict with the view that the High Court has inherent power to grant the certificate necessary to enable an appellant to obtain a refund of excess Court-fee paid on a memorandum of appeal.[1]

579. (2) S. 13 of the Court-Fees Act requires an appellate Court to grant a refund certificate where a suit is remanded under O. XLI, R. 23, Civil Procedure Code. O. XLI, R. 23, however, applies only where the Original Court has disposed of the suit on a preliminary point. Where the suit has not been disposed by the first Court, *e.g.*, in a case of an appeal against a preliminary decree, a certificate for refund cannot be given by the Court under S. 13, in such a case.[2] When the decree appealed against was set aside as against some of the respondents only, but was left outstanding against other respondents, the remand was not on a reversal of the preliminary point, of the whole suit, and the successful appellants were not held entitled to a certificate for refund under S. 13 of the Court-Fees Act.[3] No refund can be made when a suit is compromised.[4] But, where an appeal had been compromised in Court, in the presence of parties *before* it had been entered in the cause list hung up in

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(48) *C. T. A. M. Chettyar Firm* v. *Ko Yin Gyi*, 117 I.C. 585=7 Rang. 88=1929 Rang. 158.

(49) *Janab Prasad* v. *Askaran Prasad*, 1928 Pat. 29=6 Pat. 602=105 I.C. 742=9 P.L T. 337; also see *Puran Singh* v. *Kesar Singh*, 30 P.R. 1907; and *Hitendra Singh* v. *Maharaja of Darbhanga*, 92 I.C. 626=1926 Pat. 147=7 P.L.T. 392.

(50) *Jagdesh Chowdhury* v. *Radha Dubey*, 1928 Pat. 35=6 Pat. 599=105 I.C. 740; (Tuberant power not to be exercised in every case).

(1) *Ibid.* 1928 Pat. 35, distinguished from 3 P.L.J. 452=46 I.C. 271=(1918) P.H.C.C. 273.

(2) *Nand Kumar Singh* v. *Bilas Ram*, 43 I.C. 855=4 P.L.W. 100=3 P.L.J. 116=(1917) Pat. C.W.N. 377; also see *Umrao Ali Khan* v. *Abdul Subban*, 28 A.W.N. 40=5 A.L.J. 545.

(3) In the matter of *Bhagwant*, 39 I.C. 28=14 A.L.J. 671.

(4) *The Land Mortgage Bank of India* v. *G. P. Mehtus*, 4 Beng.L.R. app. 96.

the Court-room, it was held that the appellant was entitled to a refund of the full amount of stamp duty paid by him.[5] Where the final decree in a partition suit was drawn up by mistake on Court-fee stamp, instead on a non-judicial stamp directed to be filed by the plaintiff, in the exercise of the inherent powers of the Court Under S. 151 of the Civil Procedure Code, the plaintiff was allowed to put in a non-judicial stamp of the proper value, which would be defaced and attached to the decree already drawn up, but the plaintiff was not entitled to any relief by way of refund of Court-fee stamp, as of right, though such relief may be granted to him by the revenue authorities only as a matter of indulgence.[6] It is not the duty of a Court clerk to inform Counsel of the practice of the Court. Where an unstamped memorandum of appeal, accompanied a time-barred application for leave to appear as a pauper, was subsequently allowed to be stamped, but it could not be received to start a fresh proceeding until it had been stamped with the required stamp, and the counsel asked for a return of the Court-fee stamps affixed on the said appeal, it was held that the mere fact that the counsel was misled by the practice of the Court, was no ground for asking for the return of the stamps.[7]

580. REFUND UNDER SPECIAL ACTS AND PROVISIONS.—(1) S. 10 of the Court-Fees Act empowers the Court to grant refund of excess Court-fee paid in consequence of a wrong estimate of the nett profits or market-value. This refund is not obligatory, but rests with the discretion of Court in the matter. Ss. 14 and 15 of the Act provide for refund of Court-fee on review applications. Ss. 19-a to 19-k provide for refund of Court-fee paid for probate and letters of administration.

(2) S. 151 of the Code of Civil Procedure, saves the inherent jurisdiction of Court to certify refunds where Ss. 13, 14 and 15 of the Court-fees are inapplicable: and as noticed above, this is a matter of pure discretion of Court, which may be allowed as an indulgence, but which cannot be claimed by a party paying Court-fee in excess, as a matter of right.[8]

(3) MADRAS CITY CIVIL COURTS ACT (Madras Act VII of 1892), S. 13, provides that "whenever any suit or proceeding in the Civil Court is settled by the agreement of the parties before

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(5) In the matter of *Gujendro Narain Roy*, 11 W.R. 158.

(6) *Rafiuddin* v. *Latif Ahmed*, 7 I.C. 94=12 C.L.J. 324=14 C.W.N. 1101. Compare, *Harihar* v. *Anand*, 40 Cal. 365, (refund of over-payment of Court-fee paid by mistake, allowed); also see and *cf. Muhammed* v. *Raj Ballanath*, 107 I.C. 320; and *Sasi Bhushan* v. *Manik-lal*, 107 I.C. 825, (power of Court to certify excess payment of Court-fee paid under a *bona fide* mistake of party).

(7) *Anamallay* v. *O. M. M. R. H. Chetty Firm*, 22 I.C. 884 (L.B.).

(8) 11 Beng.L.R. 312 and 370; 14 W.R. 47; 30 All. 103; 36 All. 532; 1930 All. 471=122 I.C. 188=52 All. 546; 8 Bom. 313 (F.B.); 20 I.C. 498=40 Cal. 365; 84 I.C. 278=1924 Cal. 1054=28 C.W.N. 928; 1932 Cal. 450; 1932 Mad. 438=139 I.C. 131=55 Mad. 641; 28 I.C. 300; 35 Mad. 567=10 I.C. 201; 1934 Mad. 84; 46 I.C. 271=3 P.L.J. 452; 107 I.C. 320; 107 I.C. 825; 1933 Oudh 170 (1)=7 Luck. 588; 83 I.C. 829 (832)=1925 Oudh 39; 1933 Lah. 351=142 I.C. 633.

issues have been settled, or any evidence recorded, half the amount of the institution fees paid by the plaintiff shall be repaid by him by the Court.''

(4) PRESIDENCY SMALL CAUSE COURTS ACT, (XV of 1882) S. 73, enacts, that ''whenever any such suit or proceeding is settled by agreement of the parties before the hearing, half the amount of all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid.''

(5) THE PUNJAB COURTS ACT (XVIII OF 1884), S. 72, allows a refund when a decree is set aside or modified, or a suit is remanded on application under S. 70.

(6) Under NOTIFICATION No. 4560, Part A, Cl. 3, dated 10th September, 1889 (issued by the Governor-General), a refund of Court-fee on a plaint rejected by a Civil or Revenue Court for a technical error, without summoning the defendant, is allowed.

(7) Under standing Order No. 90 of the Board of Revenue, Madras, dated 1st August, 1873, (published on page 1257, Fort St. George Gazette, dated 5th August, 1873), a refund is allowed for a Court-fee stamp (spoiled or unfit for use) of the value of rupee one and above (less one anna in the rupee). A stamp is said to be spoiled or unfit for use,

(i) When by accident happening to the stamp before it is submitted to any Court or office it is rendered unfit for use,

(ii) When because of some error in the drawing up or copying of any writing to which the said stamp is affixed, the writing is rendered of no avail.

(iii) When the stamp is filed in any Court or office and cancelled and it is afterwards discovered that the stamp has been required by mistake, and that a stamp of less value ought to have been required and a certificate to that effect is issued by the Court or officer, and

(iv) When plaints written thereon have not been presented in any Court.

Court-fee on a plaint once presented into Court, returned for some defect and not re-submitted to the Court will not be refunded.

581. APPLICATION FOR REFUND OF STAMPS.—In an application for refund of stamps, the Court had to consider whether the memorandum of appeal was or was not properly stamped.[9] Applications for refund filed under this section need not be stamped,[10] as it need not be made in writing and may be made by

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(9) *Lakshmi Narain Jagdeo* v. *Krittibas Das*, 19 I.C. 971=18 C.L.J. 133.

(10) 9 W.R. 357.

a mooktear duly authorized.[11] But where an application is put in under S. 151, Civil Procedure Code, it must be stamped. Applications to the High Court for refund under S. 151, Civil Procedure Code, are exempt from stamp duty, *vide* G.O. No. 31, of 1927, dated 5th January, 1927.[12] Where the refund is made under S. 13, the full amount of Court-fees paid on the memorandum of appeal, without any deduction in the shape of a discount, is to be returned to the appellant. But, where excess Court-fee is paid by mistake and a refund is ordered, the party who has affixed stamps in excess will be allowed a refund of their value less one anna in the rupee, except in cases in which the amount of the excess value is less than a rupee[13]

582. **PROVISO**.—The Proviso refers to cases where the decision in favour of the respondents is set aside *qua* a portion only of the subject-matter of the suit, but in either case the decree appealed against must be set aside *qua* all the respondents.[14] Where an appeal to the High Court was filed on a stamp-paper worth Rs. 100, and the result was a remand in respect to a portion of the property requiring the same amount of stamp-duty, the appellant was held entitled to a refund of the stamp-duty in full.[15]

14. Where an application for a review of judgment is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in his discretion, grant him a certificate authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.

Refund of fee on application for review of judgment.

Synopsis.

1. Scope.
2. Review of judgment.
3. Court-fee on review applications.
4. Review relating to portion of judgment.
5. Review of order.
6. Review in forma pauperis.
7. Computation of time.

583. **SCOPE**.—Sections 14 and 15 deal with the refund of Court-fee stamps on review applications. An application for

(11) *Ibid.*

(12) *Satyamurthi*, p. 265; *cf. Haridasi Debi* v. *Gopeshwar Pyne*, (1923) 77 I.C. 619=1923 Cal. 599=27 C.W.N. 646. (*Held*, that an application to the High Court, for the refund of money deposited by the applicant for the preparation of a paper-book in an appeal, should under the provisions of Art. 1, Sch. II, to the Act bear of Court-fee of Rs. 2). Such an application does not come within the purview of S. 19 (xx) of that Act, and is, therefore, not exempt from the payment of Court-fees).

(13) See, *Satyamurthi*, p. 266 (citing Civil Rules of Practice and Circular Orders of the Madras High Court, Vol. I, p. 182).

(14) In the matter of *Bhagwanti*, 39 I.C. 28=14 A.L.J. 671.

(15) 9 W.R. 357.

review of judgment, if presented on or after the ninetieth day from the date of the decree, requires the full *ad valorem* Court-fee leviable on the plaint or memorandum of appeal. But, only one-half of this fee is levied when the application for review of judgment is presented before the ninetieth day from the date of the decree—*vide*, Art. 405 of Sch. I, Court-Fees Act. This section provides a measure of relief, in cases where the application for review is presented *after* 90 days. But the delay is not attributable to the petitioner's laches, and the Court has a discretionary power to direct a refund of the difference between the amount paid and that which would have been payable, had the application been presented within ninety days. Such discretion has no necessary connection to the merits of the review petition. The next section provides for a refund of the Court-fee paid for the review application itself, over, and above what is payable on any other application to the Court, when the petitioner has succeeded in whole or in part in his petition for review. Under S. 14, the only question is whether the delay in *preferring* the review petition, even beyond the 89th day of the decree, till which date alone the concession rate of fee is leviable, is excusable, and is not due to any *laches* on the part of the petitioner. Under S. 15, the question of refund depends on the ultimate success or failure of the review petition on the *merits*. A refund under S. 15 is obligatory, not discretionary.

584. **REVIEW OF JUDGMENT.**—Section 114, of the Code of Civil Procedure gives a brief statement of the Court's general power of review, and the details and procedure are provided for in Order 47.

585. **COURT-FEE ON REVIEW APPLICATIONS.**—Under Arts. 4 and 5, Sch. I, of the Court-Fees Act, the scheme is that concessional half-rate is to be paid only if the application for review of judgment is presented *before* the ninetieth day from the date of the decree.[16] The applicant may be entitled, for *limitation* purposes to deduct the time spent in obtaining a copy of the decree,[17] or to get an allowance if the last day for filing the application falls on a Sunday or a holiday.[18] But, for purposes of Court-fee, no such deduction of time is allowed,[19] and the time occupied in obtaining copies is not to be excluded.[20] The Limitation Act, and the Court-Fees Act are not in *pari materia*,[21] and the provisions of S. 5 or S. 12 of the Limitation Act, cannot be applied to extend the period fixed in the Court-Fees Act for

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(16) *Fazal* v. *Umar*, 88 I.C. 1019=1925 Lah. 377=7 L.L.J. 129=26 P.L.R. 167.

(17) *Ibid.* 88 I.C. 1019=1925 Lah. 377.

(18) See, S. 4 of the Limitation Act.

(19) *Sayera Bibi* v. *Bhutnath*, 15 I.C. 455=15 C.L.J. 505.

(20) *Jugal* v. *Jageswar*, 2 I.C. 302.

(21) In re, *Kota*, 9 Mad. 134.

the presentation of an application for review on payment of half-fee.[22]

586. REVIEW RELATING TO PORTION OF JUDGMENT.—The ALLAHABAD HIGH COURT, held in the case of *Sheikh Ali Ahmad*,[23] that the proper Court-fee payable on an application for review of judgment is the fee leviable on the plaint or memorandum of appeal in the suit in which the judgment sought to be reviewed was passed. The fee would be the same whether the application affects the whole of the decree or only a portion thereof as the Act draws no distinction between applications referring to the whole decree or only a portion of it. The Court refused to read Art. 4, of Sch. I, of the Act, as if it ran: "The fee leviable on a plaint or memorandum of appeal asking for the same relief as that asked for in the application for review."[24] THE PUNJAB CHIEF COURT, agreed with the view of the Allahabad High Court, in holding that "no matter what may be the actual relief sought, the Court-fees leviable is the fee actually leviable upon the memorandum of appeal upon which the judgment, of which review is sought, was passed."[25] THE CALCUTTA HIGH COURT took the same view, in *Nandalal* v. *Jogendra Chandra*,[26] holding that "it is immaterial whether the applicant seeks a review of the judgment in respect of the whole or a fraction of the subject-matter of the controversy. The proper fee for the application is the fee leviable on the plaint or memorandum of appeal, whether the review affects the whole or a part of the decree."[27] In *Satyakripal Banerji* v. *Satyabikash Banerji*, it has been again held, that Court-fees on an application for a review of judgment are leviable on the value of the entire claim in suit, and not on the value of the relief sought for in review proceedings. The words "the plaint" do not mean an imaginary plaint which might be filed at the time of the application for review and asking for the same relief as in that application.[28] But, the Madras,[29] and Bombay[30] decisions to the contrary have been followed by the Madras High Court in the case

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(22) *Ruldu Mal* v. *Sabha*, 39 P.R. 1879.

(23) 1 I.C. 209=6 A.L.J. 215=31 All. 294.

(24) Compare, 7 Mad. H. C. Rep., app. 1, where this construction was adopted. *cf.* also, In re *Mandhar Tambekar*, 4 Bom. 26 (decision "not without hesitation"); see, *Nobinchandra Chackerbutty* v. *Mohammad Uzir Ali Sarkar*, 3 C.W.N. 292; and *Imdad Hassun Khan* v. *Badri Prasad*, 18 A.W.N. 212.

(25) *Mt. Husaina* v. *Mt. Sahib Nur*, 20 I.C. 3=254 P.L.R. 1913=159 P.W.R. 1913.

(26) 82 I.C. 297=28 C.W.N. 403=39 C.L.J. 222=1924 Cal. 881.

(27) *Ibid.* citing 3 C.W.N. 292; A.W.N. (1898) 212; 1 I.C. 209=31 All. 94=6 A.L.J. 215; 20 I.C. 3=254 P.L.R. 1913=159 P.W. R. 1913; and dissenting from 7 M.H.C.R. app. 1 and 4 Bom. 26.

(28) *Satya Kripal* v. *Satyabikash*, 129 I.C. 191=57 Cal. 679=1930 Cal. 631.

(29) Proceedings 16th January, 1872, 7 M.H.C.R. app. 1.

(30) In re *Manohar G. Tambekar*, 4 Bom. 26.

of *In re Punya Nahako*,[31] and it was held that where a judgment in appeal was passed before the increase in the Court-fees under the Madras Court-Fees (Amendment) Act of 1922 came into force, and a review application was put in after the amended Act was passed, that the Court-fee leviable on such application must be calculated as if the application for review were a memorandum of appeal for the relief sought for, and that the fee was leviable according to the new scale.[32]

587. **REVIEW OF ORDER.**—An application for review of an interlocutory order of remand for further enquiry is no doubt an application for a review of "judgment", because this expression is defined as meaning the statement given by the Judge of the grounds of a decree or order, but from the language of Arts. 4 and 5 of the Court-Fees Act it is clear that they deal with judgments ending in a decree. Consequently, reviews against such orders may be presented on an application stamped under Sch. II, Art. 1.[33]

588. **REVIEW IN FORMA PAUPERIS.**—When an application for review is presented in a suit *in forma pauperis*, that application, like the plaint in the suit, is not liable to any Court-fee.[34] But, the Rangoon High Court has held that the Court has no inherent power to give leave to prosecute an application for review *in forma pauperis*, and it cannot be considered to be a continuation of the appeal.[35] Where plaintiff-appellant had not asked for, or obtained leave to sue or appeal as a pauper, but after dismissal of his appeal, he applied for review of judgment *in forma pauperis*, it was held by the Punjab Chief Court that neither the Civil Procedure Code nor the Court-Fees Act contemplates or provides for an application for review of judgment *in forma pauperis*, and the petitioner for review, who had not been declared a pauper in any of the earlier stages of the case, had to file the usual stamp required by law on his application.[36]

589. **COMPUTATION OF TIME.**—In computing the period of eighty-nine days from the date of decree, within which an application for review of judgment may be presented on payment of half the fee leviable on the plaint, or memorandum of appeal, the time during which the Court is closed for vacation cannot be excluded.[37] "Section 14, of the Court-Fees Act treats every application presented on or after the ninetieth day as pre-

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(31) 100 I.C. 72=52 M.L.J. 128=25 L.W. 203=(1927) M.W.N. 101=38 M.L.T. 40=1927 Mad. 360=50 Mad. 488.

(32) *Ibid.* 100 I.C. 72=1927 Mad. 360=50 Mad. 488.

(33) *Jagannath Prasad* v. *Mulchand*, 1 I.C. 999=31 All. 262=6 A. L.J. 151: follows *De Souza* v. *Secretary of State*, B.P.J. (1892) 383 (Application to High Court chargeable with a fee of Rs. 2).

(34) *Umda Bibi* v. *Naima Bibi*, 20 All. 410.

(35) *Ma Nyein Yore* v. *P. D. Patel*, 127 I.C. 470=1930 Rang. 280 =8 Rang. 423.

(36) *Karam Khan* v. *Buta Khan*, 91 P.R. 1895.

(37) In re *Kota*, 9 Mad. 134=9 Mad. Jur. 423; also see *Sayera Bibi* v. *Bhutnath*, 15 I.C. 455=15 C.L.J. 505 (F. N. 25, below).

sented out of time, and authorizes the Court to refund the excess stamp in its discretion, unless the delay is caused by the applicant's laches. According to it, there may be delay, but it may not amount to laches, and in such cases the Court is to have discretion. When the delay amounts to laches, no refund is to be made. The apparent intention is to require full stamp in every case of delay after the eighty-ninth day from the date of the decree, and to permit a refund at the discretion of the Judge when the delay is not due to the applicant's laches.[38] The section shows that full stamp must be paid in all cases after the eightyninth day, whatever the cause of the delay, but it allows the Court to certify for a refund if satisfied that the delay was not caused by the applicant's laches.[39] The Calcutta High Court has taken the same view in two early cases. In *in re Doorga Prosanno Ghosh*,[40] where the application for review of judgment was filed on the re-opening day of the High Court after vacation, but after the ninetieth day fell during the vacation, it was held that full fee leviable on the memorandum of appeal must be paid in the first instance, but that the Court, if satisfied that the delay was not caused by the laches of the applicant, might direct a refund of of one half of such fee. Similar view was taken in *Sayera Bibi* v. *Bhutnath*,[41] where it was held that when an application for review of judgment is filed on the ninetieth day, the eightyninth being Sunday, it must be stamped with the full fee leviable on the plaint, or the memorandum of appeal, as the case may be. The date of the decree, is taken to be the date of the signing the decree,[42] and the date of presentation to the stamp reporter is the proper date for computation.[43] If the eightyninth day is a holiday, and the petition is filed on the ninetieth day, the Calcutta High Court now takes this modified view that it holds it to be an idle formality to insist upon the payment of the full Court-fee, and then to issue a refund certificate.[44]

15. Where an application for a review of judgment is admitted, and where, on the rehearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorizing him to receive back from the Collector so much of the fee paid on the

Refund where Court reverses or modifies its former decision on ground of mistake.

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(38) In re *Kota*, 9 Mad. 134, Per *Muthuswami Ayyar, J.*

(39) *Ibid.* 9 Mad. 134; Per *Hutchins, J.*

(40) 9 C.L.R. 479.

(41) 15 I.C. 455=15 C.L.J. 505.

(42) *Kalipada* v. *Sekhar*, 35 I.C. 348=24 C.L.J. 235.

(43) *Nowrang* v. *Janardhan*, 1924 Cal. 994=80 I.C. 294; also see *Kalipada* v. *Sekhar*, 35 I.C. 348=24 C.L.J. 235.

(44) *Nowrang* v. *Janardhan*, 80 I.C. 294=1924 Cal. 994; *cf.* 9 Mad. 134; and 15 C.L.J. 505=15 I.C. 455.

[application] as exceeds the fee payable on any other application to such Court under the second schedule to this Act, No. 1, clause (*b*) or clause (*d*).

But, nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part to fresh evidence which might have been produced at the original hearing.

Synopsis.

1. **Amendment.**
2. **Scope.**
3. **Inherent power of the Court.**
4. **Conditions to be fulfilled under this section.**

590. **AMENDMENT.**—The word "*application*" has been substituted for the original words "plaint or memorandum of appeal," by the Court-Fees Amendment Act, XX of 1870.

591. **SCOPE.**—This section authorises a successful applicant for review of judgment, save when he succeeds wholly or in part on the ground of fresh evidence, which he could not produce at the original hearing, to receive back nearly the whole of his fee he had to pay on his application for review.[45] The refund of Court-fee is obligatory under this section where the application is admitted to hearing, and as a result the original judgment is "*reversed or modified,*" on the ground of "*mistake in law or fact.*" The policy of the Legislature is based on the equitable ground of not charging twice over for the same judgment, which but for the mistake aforesaid should have been delivered in the first instance by the very same Court. A review petition granted on the ground of discovery of fresh evidence has, however, been excepted from the application of this equitable principle, and the section enacts that where the success of a party is due to the production on the second occasion of some fresh evidence, which might have been produced at the original hearing, no such refund will be allowed.

The section applies where the petitioner succeeds wholly in getting the judgment reversed, or in part in obtaining a modification in the judgment.[46] The amount refundable is all but the fee payable on an ordinary application to Court.

592. **INHERENT POWERS OF COURT.**—Even in cases where S. 15 is inapplicable, the Court has power, under S. 151, Civil Procedure Code, to order a refund of Court-fees to meet the ends of justice, and to prevent an abuse of the process of Court.[47] The Court has the power under S. 151, Civil Procedure Code, to grant a certificate in cases not covered by S. 13, 14 and 15, Court-

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(45) In the matter of *Sheikh Maqbul Ahmad,* 1 I.C. 209=31 All. 294 (299).

(46) In the matter of *Sheik Maqbul Ahmad,* 1 I.C. 209=31 All. 294.

(47) *C. T. A. M. Chettiar* v. *Ko Yin Byi,* 7 Rang. 88=1929 Rang 158 =117 I.C. 585.

Fees Act.[48] The mere fact that the petition for review refers to S. 151, Civil Procedure Code, as the additional authority for allowing refund of Court-fee, is no bar to the order of refund being made under this section in appropriate cases.[49] The Court can act in the exercise of its inherent powers where it was misled by the appellant practising a fraud on the Court.[50] The mistake to be corrected may be one of fact or of law: even a mere clerical or arithmetical error, can be corrected under S. 151 or S. 152, Civil Procedure Code, and a refund of the Court-fee can be directed without reference to Court's powers under S. 15 of the Court-Fees Act.[1] A delay of six months in making the application for refund is no bar to grant of relief under this section.[2]

593. **CONDITIONS TO BE FULFILLED.**—In order to attract the operation of S. 15 of the Court-Fees Act the conditions requisite are that there should be an application for review of judgment, that it should have been admitted, that on the rehearing the Court should have reversed or modified its former decision on the ground of mistake in law or fact and that such reversal or modification was not due to fresh evidence which might have been produced at the original hearing[3] but which he did not produce.[4] The terms of this section are not in exact accordance with the provision in the Civil Procedure Code. Where the ground of review is the discovery of fresh evidence, a petitioner has to satisfy the Court that there was no *remissness* on his part in adducing all possible evidence at the trial: *e.g.*, by proving that the evidence was not known to the applicant and could not have been produced by him by the exercise of due diligence at the time when the decree was passed.[5] Where fresh evidence is discovered after judgment has been given, and the evidence is such that with diligence the party might, under the circumstances, have obtained before or during the trial of the suit, the application would be dismissed.[6] Stress therefore

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(48) Also see, *Vijayalakshmi* v. *Srinivasa Iyengar*, 1934 Mad. 84; and *Mohammad Sadiq Ali Khan* v. *Ali Abbas*, 1933 Oudh 170 (1)=7 Luck. 588=10 O.W.N. 292, (*Held*, that a Court has jurisdiction to order a refund of Court-fees in cases which do not fall within any of the Ss. 13, 14 and 15 of Court-Fees Act).

(49) *Probhas Kumar Ganguli* v. *Nithar Lal Ganguli*, 84 I.C. 278=1924 Cal. 1054.

(50) *Peary Chowdhry* v. *Sonoo Das*, 27 I.C. 628=19 C.W.N. 419.

(1) See F.N. (3) above.

(2) *Tej Narain Singh* v. *Secretary of State*, 10 Pat. 649.

(3) *Probbas Kumar* v. *Nithar Lal*, 84 I.C. 278 (279); also see *Tej Narain* v. *Secretary of State*, 10 Pat. 649.

(4) In the matter of *Sheikh Maqbul Ahmed*, 1 I.C. 209=31 All. 294 (299).

(5) *Nundo Lal Mullick* v. *Punchanan Mukherjee*, 43 I.C. 484 (493)= 45 Cal. 60=21 C.W.N. 1076=26 C.L.J. 187.

(6) *Kessowji Issur* v. *G. I. P. Ry. Coy.*, 31 Bom. 381 P.C.=9 Bom.L.R. 671=34 I.A. 115 P.C.; also see *Chiranjilal* v. *Tulsi Ram Jankidas*, 56 I.C. 734 (738)=31 C.L.J. 134=47 Cal. 568 (Court has before admitting a review application to come to the finding whether due diligence was exercised with regard to the production of such evidence at the trial).

cannot be laid on the word *might* in S. 15, as meaning anything different from *could*. The mistake may be one of law or fact *i.e.*, any kind of mistake which would be sufficient for the success of a review application.

16. [*Repealed.*]*

17. Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act.

Multifarious suits.

Nothing in the former part of this section shall be deemed to affect the power conferred by the Code of Civil Procedure, section 9 (now O. 2, R. 6, C. P. C., V of 1908.)

Synopsis.

1. Amendments.
2. Object of the section.
3. Scope and application.
4. "Distinct subjects", meaning of.
5. Illustrative cases.
   i. Suit for a balance due on a khata.
   ii. Suits on different hundis, pro-notes, deposits, mortgages, etc.
   iii. Suit for debt guaranteed by different guarantors.
   iv. Single cause of action—with one alternate relief.
   v. Suits for possession and mesne profits—single cause of action.
   vi. Suits for one main relief—single cause of action.
   vii. Single cause of action—collective suits.
   viii. Different causes of action—with alternate reliefs.
   ix. Suits comprising distinct subjects.
   x. Suit for damages and injunction.
   xi. Suit for inheritance, and as legatee.
   xii. Suit for possession and mesne profits—distinct cause of action.
   xiii. Suit for partition and accounts.
   xiv. Suits for redemption.
   xv. Different causes of action—suits for two or more reliefs.
6. Costs in appeal.
7. Consolidation of suits or appeals.
8. Maximum limit.

*The repealed section ran as follows:—

"When any appeal is presented to a Civil Court not against the whole of a decision but only against so much thereof as relates to a portion of the subject-matter of the suit, and on the hearing of such appeal respondent takes under S. 561 of the Code of Civil Procedure an objection to any part of the said decision other than the part appealed against, the Court shall not hear such objection until the respondent shall have paid an additional Court-fee which would have been payable had the appeal comprised the part of the decision so objected to." This section requires no comment, having been repealed by Schedule V of the Code of Civil Procedure, 1908, and unnecessary in view of the insertion of the word "cross-objection" in Art. 1, Sch. I of this Act. The Schedule V of the Code has since been repealed, but without expressly enacting the restoration of this section.

594. AMENDMENTS.—The words "or cross-objection" have been inserted after the words "memorandum of appeal," by Act II of 1922, Bihar and Orissa Court -Fees (Amendment) Act.

By Act V of 1922, Madras Court-Fees (Amendment) Act, the words "memorandum of appeal" in S. 17, Court-Fees Act, 1870 shall include "a memorandum of cross-objections" in all places where the words 'memorandum of appeal' occur in the principal Act.

595. OBJECT OF THE SECTION.—The plain object of the rule laid down in S. 17 of the Court-Fees Act was to prevent loss to the revenue by the joinder of separate causes of action in one suit, whether the reliefs sought were alternative or cumulative, the fees to be paid being the same as if separate suits had been filed.[7] The value for purposes of appeal is quite irrespective of the value for purposes of Court-fee under S. 17 of the Court-Fees Act. Neither S. 8 of the Suits Valuation Act, nor the general rule, that the value for Court-fee governs the value for jurisdiction, can be applied to cases in which separate reliefs, no one of which exceeds the value of the property in suit, are claimed in the alternative in respect of that property; that the value for purposes of jurisdiction or further appeal in such a suit must be the market-value of the property.[8]

596. SCOPE AND APPLICATION.—(1) APPLICATION TO SUITS AND APPEALS.—S. 17 of the Court-Fees Act, applies to suits and appeals from suits, and not to applications, and appeals from orders passed on applications.[9] Where a number of tenants were joined as defendants in a proceeding for settlement of rents under S. 104 (2) of the Bengal Tenancy Act, it was held that the proceedings in the case could not properly be regarded as a *suit*, and that S. 17 of the Court-Fees Act was inapplicable.[10]

(2) ALTERNATIVE OR COMULATIVE RELIEFS.—In case of alternative reliefs Court-fee need be paid only in respect of one relief which appears to be of higher value,[11] or which requires a higher Court-fee, the greater being taken to include the less.[12] But

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(7) *Nur Ilahi* v. *Umar Baksh*, 6 I.C. 715=41 P.R. 1910; also see *Mt. Fatima Begam* v. *Muhammad Zakaria*, 96 P.R. 1895.

(8) *Ibid.* 6 I.C. 715=41 P.R. 1910; also see 96 P.R. 1899, *supra*. (*Held*, that the Suits Valuation Act contains no rule corresponding to S. 17, for Court-fee purposes).

(9) *Dhanpatmal Dewanchand* v. *Labhchand Sardarilal*, 1933 Sind 343 (344); also see *Upadhya Thakur* v. *Persidh Singh*, 23 Cal. 723 (F.B.).

(10) 23 Cal. 723, (F.B.), *supra*.

(11) See comments, under S. 7, *ante*; citing 6 Bom. 302; 15 Bom. 82; 73 I.C. 709=1923 Lah. 456; 96 I.C. 826=1926 Lah. 467; 78 I.C. 530=1925 Pat. 193, also see *Ananda* v. *Laxman*, 120 I.C. 411=1930 Nag. 55.

(12) 78 I.C. 530=1925 Pat. 193; 1932 Mad. 158 (159)=34 L.W. 837=62 M.L.J. 151; also see 100 I.C. 913, citing 44 I.C. 143 (Pat.) (*Held*, that S. 17 does not apply where alternate reliefs are claimed for).

the BOMBAY and PATNA view, that S. 17 of the Court-Fees Act does not apply to the case of alternative reliefs, where the larger of the two reliefs sought determines the amount of the stamp, and that this section is applicable only to a case of cumulative reliefs sought by the plaintiff, is not accepted as correct by several High Courts.[13] In *Neelakandham* v. *Ananthakrishna Ayyar*,[14] the MADRAS High Court observed that "no doubt the second paragraph of the section referring to S. 45 (2), Civil Procedure Code (now O. II, R. 6), refers to cases where *prima facie* the relief sought is cumulative but the general words of the first paragraph of the section cannot be limited to the class of cases dealt with by the second paragraph which was introduced *ex majore cautela* in order to prevent the first paragraph being construed as intended to restrict the power of the Courts in regard to joinder of causes of action:" and this view was followed by the NAGPUR JUDICIAL COMMISSIONER'S Court in the case of *Dharmchand* v. *Gorelal*.[15] The Nagpur Court has held that S. 17 of the Court-Fees Act applies to alternative reliefs claimed with reference to more causes of action than one, and that the operation of the section is not necessarily confined to cases where cumulative reliefs are claimed.[16] If the suit embraces two distinct claims, though in the alternative, separate Court-fee must be paid on each part of the claim.[17] But, if reliefs are claimed in the alternative with reference to the same cause of action, S. 17 has no application, and the same rule will apply where the relief claimed is one and the same, though the claim is sought to be made out on distinct and alternate grounds.[18] The High Courts of ALLAHABAD,[19] Madras,[20] and the Punjab Chief Court, have taken the view in several cases that S. 17 applies to cases where reliefs are asked, in the alternative, but in respect of different causes of action.

597. "DISTINCT SUBJECTS"—Meaning of.—The term "district subjects" is not defined, and its interpretation has caused a considerable confusion. But the High Courts of Allahabad,[21]

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(13) See 6 Bom. 302 and 15 Bom. 82.

(14) 30 Mad. 61=16 M.L.J. 462=1 M.L.T. 426.

(15) 47 I.C. 886 (Nag.).

(16) *Ibid.*

(17) *Hirderam* v. *Ramcharan*, 78 I.C. 703=1924 Nag. 169; *Jawahir Singh* v. *Baldeo Prasad*, 11 O.C. 173.

(18) *Ananda* v. *Laxman*, 120 I.C. 411=1930 Nag. 55.

(19) *Hashmutunnessa* v. *Muhammad Abdul Karim*, 29 All. 155 (157) =1907 A.W.N. 4=4 A.L.J. 127.

(20) *Neelakandhan* v. *Anantanarayan*, 30 Mad. 61, also see 96 P.R. 1895; and 41 P.R. 1910.

(21) *Chamaili Rani* v. *Ramdei*, 1 All. 552; *Mulchand* v. *Shib Charanlal*, 2 All. 676 (F.B.); *Chedilal* v. *Kiratte Chand*, 2 All. 682 (F.B.); Reference under the Court-Fees Act, 16 All. 401; *Durga Prasad* v. *Purander*, 27 All. 186.

Calcutta,[22] Lahore,[23] Madras,[24] Patna,[25] and Rangoon,[26] as also the Nagpur[27] and Oudh[28] Courts, are now practically agreed that the expression "distinct subjects" is synonymous with separate causes of action: and that "cause of action" means "every fact which would be necessary for the plaintiff to prove in order to support his right to the judgment of the Court:"[29]

The leading case is the Full Bench ruling of the ALLAHABAD High Court in *Chamalai* v. *Ramdai*.[30] Stuart, C.J., observed that "two or more distinct subjects are to be so chargeable as being distinct *causes of action*, and it is not enough that the distinct subjects should be merely separate and distinct matters embraced in the claim." In this case the distinct subjects in the suit were (1) possession of land, (2) possession of house, (3) mesne profits, and (4) damages. The effect of this rulings, in which the other Judges concurred, with slight modifications, is that the words two or more distinct subjects, in S. 17, mean two or more distinct causes of action, but that if one cause of action includes matters which may be made the subject of separate suit they must be charged separately under S. 17. This ruling was affirmed in the other Full Bench case of *Mul Chand* v. *Shib Charanlal*,[31] where it was held that S. 17 of the Court-Fees Act "plainly relates to multifarious suits, which are allowable by S. 45 of the Code of Civil Procedure." This supplies the principle by means of which one may solve the difficulty. "Distinct subjects," must for the purposes of the Court-Fees Act, be distinct and separate claims or causes of action in single and separate suits, but which for the purpose of jurisdiction, or the convenience of procedure may be united in one suit.[32] Stuart, C. J., adds that in S. 17 "distinct

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(22) *Kishori Lal Roy* v. *Sharut Chunder Mozumdar*, 8 Cal. 593 ((F.B.); *Dhakeswar Prosad* v. *Iswardhari*, 22 C.L.J. 57; *Beni Madhah* v. *Movind Chandra*, 32 C.W.N. 669; *Satishchandra* v. *Kabdasi*, 26 C.W.N. 177.

(23) *Fatima* v. *Mahammad*, 96 P.R. 1895; *Raja* v. *Muttali*, 1926 Lah. 467.

(24) *Sundara Ramanujam* v. *Sivalingam Pillai*, 47, Mad. 150=1924 Mad. 360=45 M.L.J. 431; *Neelakanthan* v. *Anantanarayana*, 30 Mad. 61 =16 M.L.J. 462; *Devachilaya* v. *Pannathal*, 18 Mad. 459.

(25) *Waziri Begum* v. *Shashi Bhusham*, 2 Pat. 874=1924 Pat. 77; 57 I.C. 685=4 P.L.J. 197; *Mahanth Ram Narain* v. *Gauri Shanker*, 7 Pat. 405=110 I.C. 191=1928 Pat. 274; also *Nauratan* v. *Stephenson*, 1922 Pat. 359; *E.I.Ry.* v. *Ahmadikhan*, 1924 Pat. 590; *Sitabaran Jha Pandey* v. *Lokenath Missir*; 3 Pat. 618.

(26) In re (P.L.R.M.N.) *Perchiappa Chetty* v. *Po kin*, 4 I.C. 289 (F.B.); *Zamal* v. *Cysil Brad*, 36 I.C. 883; In re *Bank of Bengal* v. *Muthia Chetty*, 30 I.C. 705.

(27) *Dharam Chand* v. *Gorelal*, 47 I.C. 886; *Hirderum* v. *Ramcharan*; 1924 Nag. 169.

(28) 11 O.C. 173 (*Jawahor Singh* v. *Baldeo Parshad*).

(29) *Murti* v. *Bola Ram*, 16 All. 165 (F.B.); *Musa* v. *Manilal*; 29 Bom. 368, *Raghunathan* v. *Govind Narain*; 22 Bom. 451.

(30) 1 All. 552 (F.B.).

(31) 2 All. 676 (F.B.).

(32) 2 All. 676 (F.B.).

subjects'' are described as distinct subjects in *suits* embracing *separately* each of *such* subjects,'' which mean distinct and separate causes of action in distinct and separate suits.[33] The result of this case is that the Court unanimously held that S. 17 of the Court-Fees Act refers to ''multifarious suits,'' *i.e.*, to suits in which separate and distinct causes of action had been joined under the Civil Procedure Code, and not to a suit in which there was only one cause of action.[34] In a later case, *Chedilal* v. *Kirath Chand*, the same test was applied whether the suit was or was not multifarious, and the Court adhered to the principle of the above cases, but differed as to its application. The Full Bench of the CALCUTTA HIGH COURT in *Kishore Lal* v. *Sharut Chander*,[35] held that in a suit for possession and for *mesne* profits, the claim for the separate reliefs was to be taken as one entire claim. The above cases were discussed, and relied upon by Burkitt, J., in the case of *Reference under the Court-Fees Act* S. 5,[36] to hold that the terms ''two or more distinct subjects'' in S. 17 of the Act are equivalent to two or more distinct causes of action ''in a multifarious suit joined under the provisions of the Civil Procedure Code.'' The LOWER BURMA CHIEF COURT has similarly held in the Full Bench case of *Perchiappa Chetty* v. *Po Kin*,[37] that the words ''distinct subjects'' where synonymous with distinct causes of action: and the contention was overruled that S. 17 was to be read with S. 7 of the Act. The Madras High Court observed in the case of *Neelkanthan* v. *Ananthan Krishna*[38] that the phrase ''two or more distinct subjects'' in S. 17 may not admit of precise definition applicable to all cases, and it may be that where reliefs are claimed in the alternative with reference to the same cause of action, S. 17, would not govern the cases; that may also be so where the relief claimed is one and the same, although the claim is sought to be made out on distinct and alternate grounds.'' A Full Bench of the MADRAS HIGH COURT has recently observed that the preponderance of authority, and the long continued practice in several High Courts is in favour of the above view. There is no definition of the word ''subject,'' in the Act, and the High Court did not attempt to define it, but expressed that they should be guided only by the long course of practice.[39] The PATNA HIGH COURT has taken this view in several cases. It was observed in *Nauratan* v. *Stephenson*[40] that ''two views are possible. One view is that the word ''subject'' relates back to S. 7, where the varied subjects of suits are divided under various heads, and, that the intention of S. 17 is that where a suit comprises of two or more of the various subjects named in S. 7, the provisions of S. 17, would

(33) 2 All. 676 (F.B.).
(34) 16 All. 401 (406).
(35) 8 Cal. 593 (F.B.).
(36) 16 All. 401=14 A.W.N. (1894) 124.
(37) 4 I.C. 289=5 L.B.R. 94 (F.B.).
(38) 30 Mad. 61 (64).
(39) *Parmeshwar Pattar's case*, 1930 Mad. 833 (F.B.).
(40) 50 I.C. 470=1922 Pat. 359=1922 P.H.C.C. 79.

apply. The other view is that the word "subject", used in S. 17, means 'cause of action' and is not to be interpreted with reference to S. 7".[41] Most of the High Courts now follow this latter meaning: and the PATNA High Court also holds that the word "subject" in S. 17, means "cause of action," and is not to be interpreted with reference to the division of subjects adopted in S. 7 of the Act.[42] The NAGPUR Judicial Commissioner follows Madras ruling in NEELKANTHA'S case.[43]

598. ILLUSTRATIVE CASES.—(1) SUIT FOR BALANCE DUE ON A KHATA—ONE CAUSE OF ACTION: Bearing in mind, the interpretation of "*distinct subjects*" as given above, it would be clear that where the "cause of action," *viz.*, the whole set of facts alleged by the plaintiff as grounds for the relief claimed in the suit, is a single cause of action, with only one main relief, S. 17 can have no application whatsoever. In the Bombay Full Bench case of *Hiralal Motichand* v. *Ganpat Lahanu*,[44] the general principle applicable to suits for recovery of money on the balance due to plaintiff, by the defendant on a *Khata* account, in respect of several separate transactions which took place on different dates is thus stated:—"Where a tradesman has a bill against a party for any account in which the items are so connected together that it appears that the dealing is not intended to terminate with one contract, but to be continuous, so that one item, if not paid, shall be united with another and form one continuous demand, the whole together forms but *one cause of action* and cannot be divided". The earlier Bombay case of *Ramchandra* v. *Appaji*[45] where the several items in the *Khata* were held to constitute "distinct subjects" within the contemplation of S. 17 of the Court-Fees Act, on the ground that they were not so connected together as to form one subject, was not approved, and it was held that in a suit for a balance due on a Khata, which would ordinarily contain a number of items, each item does not constitute a distinct subject. The subject-matter of the suit is the balance due on the account, and therefore, the Court-fee payable is the Court-fee on the aggregate amount, and not on each item in the Khata.[46] The Calcutta cases in *Anderson Wright & Co.* v. *Kalagarla*,[47] and *Kedar Nath* v. *Dinobandhu*[48] were cited.

(2) SUIT ON DIFFERENT HUNDIS, PRO-NOTES, DEPOSITS, MORTGAGES, ETC.—DIFFERENT CAUSES OF ACTION.—Where

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(41) 50 I.C. 470, *supra*.

(42) *Ibid.* also see *E. I. Ry Coy.* v. *Ahmed Khan*, 78 I.C. 415=1924 Pat. 596; also see *Ram Narain Gir* v. *Gauri Shankerlal*, 110 I.C. 191=1928 Pat. 274=7 Pat. 402=9 P.L.T. 199 (*Held*, that the word 'subject' in S. 17 of the Court-Fees Act means "cause of action").

(43) *Hirde Ram* v. *Ramcharan*, 78 I.C. 703=1924 Nag. 169 follows; 30 Mad. 61=16 M.L.J. 462=1 M.L.T. 426.

(44) 64 I.C. 486=23 Bom.L.R. 995=46 Bom. 142=1922 Bom. 376 (F.B.).

(45) (1887) P.J. 271.

(46) Per *MacLeod, C. J.* in 64 I.C. 486 (F.B.), *supra*.

(47) 12 Cal. 339.

(48) 31 I.C. 626=42 Cal. 1043=19 C.W.N. 724.

the plaintiff brings his claim to recover money due from the defendant, on the basis of three separate *hundis*, each of which would afford a separate cause of action, the suit would embrace three separate and distinct subjects, and the Court-fee on plaint, or memorandum of appeal, would be chargeable with the aggregate amount of the fees to which the plaints and memoranda of appeal in suits embracing separately each of such subjects would be liable under the Court-fees Act.[49] Similarly, a suit for the recovery of three separate deposits is a suit embracing three distinct subjects. The fact that the plaintiff made one demand for all the three deposits would not make the subjects any the less distinct,[50] because the proof of demand was not necessary for obtaining judgment.[1] Where the balance of account has been struck, and in settlement of the account, the debtor on one and the same date makes in favour of his creditor three pro-notes payable on demand for sums amounting in the aggregate to the balance so found to be due from him, and the payee thereafter brings one suit against the maker in respect of his claims upon all the promissory notes, such a suit embraces three "distinct subjects" within the meaning of S. 17 of the Act, as there are three distinct causes of action present.[2] Again, where several promissory notes have been made, on different dates, by the same debtor in favour of the same payee in respect of the sums advanced by the latter to the former on different dates, and the payee brings one suit against the maker in respect of his claim upon all the promissory-notes, such suit embraces distinct subjects within the meaning of S. 17 of the Court-Fees Act.[3] Take another case. A person holding two mortgages from the same mortgagor hypothecating the same properties, and even when the due date in both is the same, can bring suits separately on the two bonds. In other words, there is nothing to prevent a mortgagee from suing on the first mortgage without joining the second mortgage and *vice versa*. In this case, therefore, the two mortgages are separate subjects under S. 17 of the Court-Fees Act.[4] Thus, where two distinct mortgages are successively executed by the same debtor in respect of the same property, and in favour of the same creditor, the causes of action on the two mortgages are distinct, and, although it is open to the mortgagee in bringing a suit upon the first mortgage to include

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(49) *Parshotam Lal* v. *Lachman Das*, 9 All. 252=(1887) 7 A.W.N. 42.

(50) *M. M. Ramaswami Chettiar* v. *A. S. P. L. V. R. Ramaswami Chettiar*, 1931 Mad. 712=134 I.C. 988.

(1) 1931 Mad. 712=134 I.C. 988, *supra*; *cf. E. I. Ry. Company* v. *Abwadi Kham*, 1924 Pat. 596; where the demand was essential, and without the demand there could be no cause of action.

(2) *P. L. R. M. N. Perchiappa Chetty* v. *Po Kin*, 4 I. C. 289=5 L.B.R. 94, (F.B.); also see *Secretary of State* v. *Ayyasami Chettiar*, 1933 Mad. 178 (*Held*, that amount of Court-fee payable is on basis of separate plaints filed for each of the several distinct claims, all of which the suit embraces).

(3) *Ibid.* 4 I.C. 289=5 L.B.R. 94, (F.B.).

(4) *Waziri Begum* v. *Shashi Bhushan Roy*, 1924 Pat. 77=2 Pat. 874=4 P.L.T. 546=(1923) P.H.C.C. 293=74 I. C. 820; also see I. C. 685 (a suit upon two separate mortgage bonds).

the claim on the second mortgage, that course is not obligatory upon him: and, unless the plaintiff is restrained by any covenant in either of them, he may obtain separate sales,[5] subject, however, to this reservation that he cannot sell the property twice over, nor sell it under the second decree subject to the first.[6] A Full Bench of the Madras High Court has held in *Subramania Aiyar* v. *Balasubramania Aiyar*,[7] that a mortgagee having several mortgages on the same property is entitled to treat them as separate causes of action and is not bound to bring one suit on all mortgages. It is therefore, open to a mortgagee holding more than one mortgage on the same property to bring a suit for the recovery of his debt one only under one of the mortgages and to sell the property under the decree in that suit subject to his rights under a prior mortgage.[8]

(3) SUIT FOR DEBT GUARANTEED BY DIFFERENT GUARANTORS. —DIFFERENT CAUSES OF ACTION.—Where the plaintiff sues the principal debtor on a cash credit account, and also in the same suit seeks decrees against the several persons who have guaranteed that account for the full amounts to which they have guaranteed it, by separate pro-notes, or mortgages, the plaint is chargeable under S. 17 of the Court-Fees Act with the aggregate amounts of fees due on the amounts claimed from each and all the guarantors separately.[9] "As regards the principal debtor the cause of action is the agreement as to the cash credit account and the amount due. As regards each guarantor it is these facts *plus* the contract of guarantee." The former facts are common to the cause of action against each guarantor, supplemented by separate and distinct contracts of guarantee in the case of each.[10]

(4) SINGLE CAUSE OF ACTION, WITH ONE ALTERNATE RELIEF. —Section 17 is not applicable where plaintiff's claim is based on a single cause of action, and the prayer is for one relief. Equally is this the case where plaintiff claims one of two or more reliefs, in the alternative, arising out of the single cause of action alleged. A suit to recover certain property wrongly sold in execution or the amount realized by sale of the property;[11] a suit to recover possession of certain land, or in the alternative for an award of Rs. 60 per annum in lieu of the profits of land;[12] a suit for the recovery of money and various articles left in the custody of the

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(5) *Sunder Singh* v. *Bholer*, 20 All. 322 (F.B.).

(6) *Nilu Roy* v. *Asirbad Mandal*, 60 I.C. 809=33 C.L.J. 232=25 C. W.N. 129; also see *Keshaoram Dudavram*, 30 Bom. 156=7 Bom.L.R. 811.

(7) 30 I.C. 317=29 M.L.J. 195=38 Mad. 927 (F.B.).

(8) *Ibid.* 30 I.C. 317 (F.B.) (319); also see *Gobind Prasad* v. *Tek Narain Mahtoon*, 7 I.C. 330=38 Cal. 60=14 C.W.N. 1053=13 C.L.J. 21 (Plaintiff holding seven mortgages of same property has a right to bring suit on six, with sale of property free from last mortgage).

(9) *The Bank of Bengal* v. *Muthia Chetty*, 30 I.C. 705=8 L.B.R. 219 (F.B.).

(10) *Ibid.* 30 I.C. 705 (706) (F.B.).

(11) *Motijavri* v. *Pranjivandas*, 6 Bom. 302.

(12) *Kashinath Narayan* v. *Govinda*, 15 Bom. 82.

defendant, or in the alternative for an equivalent in value of the articles as damages;[13] a suit for possession of property as purchaser in execution of a mortgage decree, or, in the alternative for redemption of the mortgage;[14] a suit contesting an alienation of land by vendor, or in the alternative for possession by pre-emption,[15] would be chargeable with Court-fee stamp on the larger of the two reliefs. Where two reliefs are identical in actual money value, but different in respect of the Court-fee leviable on each, then Court-fee is payable on the relief carrying the higher Court-fee.[16] Where plaintiff sued on the basis of a pro-note, principally from the first four defendants as legal representatives of their father, or in the alternative from the 5th defendant who actually took the money as agent of the executant, S. 17 was inapplicable.[17] A suit for declaration, after setting aside a certain sale, of the plaintiff's share in certain properties; or, in the alternative to the entirety of properties specified, is a case of alternative reliefs in respect of the same cause of action.[18] Where in a pre-emption case, the vendee appealed, claiming dismissal of the suit, or an increased amount payable by the plaintiff, the reliefs claimed were alternate reliefs based on the same cause of action.[19]

(5) SUITS FOR POSSESSION, AND MESNE PROFITS—SINGLE CAUSE OF ACTION.—A suit comprising several reliefs claimed as arising out of the same set of facts, which constitute but one cause of action, is to be valued in the aggregate by adding together the value of several reliefs, and a single fee should be levied on the cumulative value. For example, suits for possession and mesne profits, cannot be considered to be "multifarious suits," within the meaning of S. 17.[20] "A suit upon one and the same cause of action for possession of immoveable property, and for *mesne* profits or damages for the wrongful retention of such property was held not to be a suit embracing two or more "distinct subjects."[21] For the purpose of determining the stamp-fee payable on an appeal to the High Court, in a suit for possession and mesne profits, the claim for possession and mesne profits is to be taken as one entire claim.[22] Where plaintiff sued for recovery

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(13) *Amar Nath* v. *Thabur Das*, 3 All. 131.

(14) *Mukhlal Gir* v. *Ramdheyam Rai*, 44 I.C. 143.

(15) *Raja* v. *Muthali*, 96 I.C. 826=1926 Lah. 467=8 L.L.J. 449=27 P.L.R. 626.

(16) *Dasarthe Mesby* v. *Jay Chand Sutradhar*, 78 I.C. 530=1925 Pat. 193 (2).

(17) *Ananda* v. *Laxman*, 120 I.C. 411=1930 Nag. 55; also see and *cf.* *Mothia Meera* v. *Rowther*, 1930 M.W.N. 758.

(18) In re *Paturu Venugopalayya*, 1932 Mad. 158=34 L.W. 837=62 M.L.J. 151.

(19) *Tek Chand* v. *Tara Chand*, 85 I.C. 556=1924 Lah. 494.

(20) Reference under Court-Fees Act, S. 5, 16 All. 401=14 A.W.N. (1894) 124: following *Chamcili Ram* v. *Ram Devi*, 1 All. 552 (F.B.); and *Chedi Lal* v. *Kiratte*, 2 All. 682 (F.B.).

(21) *Ibid.* also see *Nauratanlal* v. *Stephenson*, 50 I.C. 470=4 P.L.R. 195=1922 Pat. 359=1922 Pat. C.W.N. 79.

(22) *Kishori Lal* v. *Sharut Chunder Mozumdar*, 8 Cal. 593=10 C.L.R. 359 (F.B.).

of possession of certain lands in the possession of the defendants with *mesne* profits, alleging that the lands were his *Zerait* lands, and that the defendants were wrongly entered as *raiyats* of the several plots, the suit was held rightly valued at the aggregate amount of the value of the lands and the mesne profits, and S. 17 had no application as there was only one "subject" though consisting of a number of plots.[23] In a suit for possession of immoveable property and past mesne profits, Court-fee is payable on the aggregate value of both the reliefs, and not separately on the value of each relief.[24] Claims for ejectment and for damages for use and occupation since the termination of the tenancy by notice to quit are not distinct subjects within the meaning of S. 17 of the Court-Fees Act, as they arise out of the tenancy having come to an end, and the defendant wrongfully remaining in occupation.[25]

(6) SUITS FOR ONE MAIN RELIEF—SINGLE CAUSE OF ACTION.—In a suit for land, trees standing thereon need not be separately valued. A decree for the land will pass all the trees on the land.[26] Where the plaintiff seeks to redeem the usufructuary mortgage, the Court-fee is payable on the principal amount exclusive of any surplus profits realised by the mortgagee and claimed in the suit. Under S. 76 (*b*) of the Transfer of Property Act a usufructuary mortgagee is bound to pay any surplus realisations to a mortgagor.[27] A suit for a declaration that a sale in execution is illegal and inoperative, and for an injunction restraining the auction-purchaser and puisne mortgagee from taking possession, is a suit to obtain a declaratory decree or order with consequential relief, and the case is clearly outside the scope of S. 17 of the Act, the plaintiff has to pay only one Court-fee on the value of the total relief under S. 7 (4) (*c*).[28] A suit for specific performance of a contract of sale, and for delivery of possession, is a suit for specific performance falling under S. 7 (x) (*a*) of the Act. Both the rights, *viz.*, the right to the sale deed, and the right of possession spring out of the same contract, though one necessarily precedes the other.[29] It is not a combination of two suits, or of two or more distinct subjects to attract the application of S. 17 of the Court-Fees Act.

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(23) *Ram Narain Gir* v. *Gauri Shanker Lal*, 110 I.C. 191=7 Pat. 402=1928 Pat. 274.

(24) *Parameswara Pattar*, 1930 Mad. 833 (F.B.); relied on 8 Cal. 593 (F.B.); and 16 All. 401, *supra*. *Cf.* 38 Mad. 829=27 I.C. 679 (F.B.); (Case under O. 2, R. 2, C. P. Code).

(25) *Jamal* v. *Cyril Brown*, 36 I.C. 883 (2)=8 L.B.R. 529. (*Held*, that a claim for rent, however, is a distinct subject; as it arises out of the contract of tenancy, and can be enforced by a separate suit).

(26) *Kulappa Goundan* v. *Abdul Rahim Saheb*, 39 I.C. 254=40 Mad. 824=5 L.W. 270=21 M.L.T. 251.

(27) *Gopikisan* v. *Sorabji*, 1922 Nag. 259=68 I.C. 226; also see and *cf. Eacharan Pattar* v. *Appu Pattar*, 19 Mad. 16 (F.N. 37).

(28) In the matter of *Kapi Pada Mukharjee*, 1930 Cal. 686=58 Cal. 281=34 C.W.N. 870.

(29) *Sundara Ramanujam* v. *Sivalingam Pillai*, 47 Mad. 150=77 I.C. 542=18 L.W. 333=54 M.L.J. 431=1924 Mad. 360; also see *Madan Singh* v. *Gaja Prosad Singh*, 11 I.C. 228=14 C.L.J. 159.

(7) SINGLE CAUSE OF ACTION—COLLECTIVE SUITS.—The Court-fee leviable in respect of a plaint or memorandum of appeal in a suit for profits due for a number of years, is the amount calculated on the aggregate amount of the profits claimed, and not on the separate amounts claimed for each year.[30] A suit of the landholder under S. 193 to enhance the rent upon the particular conditions mentioned under that section which all exist before a suit under that section could be instituted, does not embrace any "distinct subjects" within the meaning of S. 17, Court-Fees Act. Hence the Court-fee payable in respect of suit by landholder against several raiyats for enhancement of rent on the same grounds is that payable on the total of the rents of the immovable property to which the suit relates, and not the aggregate of the Court-fees separately payable in respect of the rent of the holding of each particular raiyat.[31] Where the plaintiff having obtained a decree for possession of certain lands and having received formal possession thereof, brought a suit against 86 persons holding distinct and separate tenures in those lands, on one and the same cause of action, as alleged in the plaint, against all the defendants, *viz.*, a combination to keep the plaintiffs out of the enjoyment of the property they had purchased, it was held that the suit was not multifarious.[32] Where two villages, or portions of two villages, formed part of the property sold by one and the same deed, the mere fact that they were situated in villages bearing different names does not in a suit for pre-emption constitute two causes of action when those areas or shares were sold by one and the same conveyance. The cause of action is only one, *viz.*, the plaintiff's right to pre-empt, and the sale by other cosharers to persons who were strangers to the village coparcenary body. Consequently, the Court-fee was rightly paid calculated on five times the aggregate Government revenue, and not on five times the revenue on each separately, as the case did not fall under S. 17 of the Court-Fees Act which applies only to "distinct subjects," meaning distinct causes of action.[33] The question whether a suit does or does not embrace two or more distinct causes of action must be decided on the terms of the plaint. Where a plaintiff who has sustained losses in respect of different consignments of different dates by negligence of a Railway administration, it is open to the plaintiff to consolidate his claim and to serve the Railway with one notice, under S. 77 of the Railways Act, in respect of all the losses. Where one notice is served in such a case it is a part of the "cause of action" of the plaintiff and it is impossible for him to maintain separate suits in respect of the separate losses or causes of action. Consequently the Court-fee in such a case is chargeable on the consolidated sum of money and not the aggregate amount of fees calculated separately

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(30) *Muhammad Malik Khan* v. *Nirhbai Bibi*, 7 All. 761=5 A.W.N. (1885), 218.

(31) *Rajah of Vizianagram* v. *the Government*, 1932 Mad. 667=63 M. L.J. 73=1932 M.W.N. 777=36 M.L.W. 191=139 I.C. 102.

(32) *Lokenath Surma* v. *Keshab Ram Doss*, 13 Cal. 147=11 Ind. Jur. 105.

(33) *Durga Prasad* v. *Purandar Singh*, 27 All. 186 (189).

on the amount of each distinct loss.[34] A suit for the payment of part of the cost of rebuilding a party wall, based upon an agreement between the defendant and the plaintiff and also upon the right for a contribution towards the cost of the same does not embrace two distinct subjects within the meaning of S. 17.[35] A suit for redemption of land mortgaged by four different mortgage-deeds of different dates, is based upon one cause of action, and requires the Court-fee to be paid upon the total sum of the principal-debt due under the several mortgages.[36]. Similarly a suit for redemption of land demised on *kanom* mortgage, and arrears of rent due under the demise, in which the prayer is for recovery of land on payment of the amount of the *kanom* minus the arrears of rent, is based on a single cause of action, and requires the Court-fee to be paid on the *kanom* amount which is the principal money expressed to be secured by the mortgage.[37] The suit is not for redemption and rent, but for redemption on payment of the *kanom* amount, the arrears of rent due from the *kanom* being deducted.[38] In a suit brought for the entire amount due on a mortgage by persons who though as between themselves entitled to portions of that amount have a common interest in the whole, Court-fees should be paid on the whole sum as one claim, and not on the several portions as separate claims. The fact that the plaintiffs had separate money claims which were consolidated into one common mortgage does not make any difference.[39]

599. **DIFFERENT CAUSES OF ACTION: (A) WITH ALTERNATIVE RELIEFS.**—It has been noticed already that S. 17 has been held inapplicable to a case where the relief sought is a single relief, or one of two or more reliefs arising out of a single cause of action. Where the suit embraces different causes of action, the mere fact that the relief prayed for is a single relief prayed for in the alternative, is no ground for not applying S. 17 to the case. The MADRAS HIGH COURT held to this effect in the leading case of *Neelakantan* v. *Anantha Krishna*,[40] where plaintiff had sued (1) to redeem certain property after setting off arrears of rent against the *kanom* amount, and (2) for an alternative relief based on a contract for a further mortgage which was distinct from the earlier mortgage right, though both were evidenced by the same instrument. The alternative claims therefore were held to be distinct matters which could have been made the grounds of separate suits; and S. 17 was applied to determine the value of the suit

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(34) *East India Railway Company* v. *Ahmadi Khan*, 78 I.C. 415=1924 Pat. 175=1924 Pat. 596. Compare, *Ramaswami Chettiar* v. *Ramaswami Chettiar*, 61 M.L.J. 680 (case of separate deposits, where one notice was not a part of cause of action).

(35) 1887 B. P. J. 8.

(36) 7 O.C. 152.

(37) *Eacharam Pattar* v. *Appu Pattar*, 19 Mad. 16.

(38) Per *Best, J.* in 19 Mad. 16, *supra.*

(39) (A.M.P.R.) *Muthuraman Chetty* v. *Sivasubramania Chetty*, 1932 Mad. 737=63 M.L.J. 316=36 M.L.W. 424=139 I.C. 431=1932 M.W.N. 986.

(40) 30 Mad. 61.

for purposes of Court-fee and jurisdiction. The ALLAHABAD HIGH COURT was of the same opinion in the case of *Hashmat-un-Nissa Begam* v. *Muhammad Abdul Karim*.[41] It was held that a claim in the first place for specific performance of an alleged agreement to sell, and alternatively, for the enforcement of a pre-emptive right in respect of a mortgage of the same property executed by one of the defendants in favour of the other, was a suit embracing two distinct subject-matters, and therefore Court-fee was assessable upon each alternative relief separately.[42] It was pointed out that the claim for specific performance was a claim in respect of the proprietary interest in the land: whereas under the claim for pre-emption the plaintiff could only obtain such interest as the mortgagees of the defendant possessed. These two claims were thus held to be separate and distinct claims, and, as such falling within the purview of S. 17 of the Act.[43] In the PUNJAB CASE of *Mt. Fatima Begam* v. *Muhammad Zakaria*,[44] where plaintiff sued (1) for specific performance of a contract of sale in respect of the house in dispute on payment of the price agreed upon, and (2) for pre-emption of the same at the market-value, it was held that the suit embraced two "distinct subjects," in the sense of two distinct causes of action," though the demands for relief were in the alternative and not cumulative. Where the plaintiff sought the following reliefs (*a*) a declaration that a house (i) was plaintiff's property and its sale to a defendant was null and void, and (*b*) a declaration that plaintiff was owner of house (ii) by virtue of a previous sale in his favour, or a decree for specific performance of the contract of sale; or, (*c*) a decree for possession by pre-emption of the house (ii) on payment of a certain amount, the reliefs were valued at Rs. 150, Rs. 600 and Rs. 600, respectively, but the value of houses (i and ii) did not exceed Rs. 900. It was hed that further appeal was inadmissible, as being below Rs. 1,000 in value.[45] The NAGPUR JUDICIAL COMMISSIONER'S COURT has followed the Allahabad case of Hashmut-un-Nissa, in applying S. 17 to a claim for possession of the land in suit, in respect of the proprietary interest in the land, where the alternative claim in respect of the refund of money was one based on a failure of consideration.[46] The Madras High Court has gone so far as to hold that a cause of action foreign to the original one cannot be tacked to suit, by amendment of plaint, without inviting the operation of S. 17 of the Court-Fees Act. In *Pethu Reddiar* v. *Chidambaro Reddiar*[47] the plaintiff had sued as endorsee of a promissory note, which the defendant alleged was void as infringing the Paper Currency Act. Plaintiff then obtained an assignment of the original obligation, and applied to add that cause of action to his

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(41) 29 All. 155.

(42) *Ibid.*

(43) *Ibid.*

(44) 96 P.R. 1895.

(45) 41 P.R. 1910=6 I.C. 715.

(46) *Hirde Ram* v. *Ramcharan*, 78 I.C. 703=1924 Nag. 169; also see 11 O.C. 173.

(47) 1931 Mad. 533=1931 M.W.N. 390=131 I.C. 1.

plaint. It was held that the tacking of the new cause of action was a fraud on the revenue, since the only apparent reason for not bringing a second suit was to save the Court-fee: and that the fresh cause of action was useless if the original cause of action was found to include the right to sue on the debt itself, as payee. The PATNA HIGH COURT has applied S. 17 to alternative reliefs claimed with reference to more causes of action than one in a number of cases. In *Dharamchand* v. *Gorelal* [48] the facts were complicated, but the alternative claims for auction price of a house from *D*, based on plaintiff's rights as vendee from one *G*, and for refund of purchase-money from *G*, owing to latter's defective title, were held to be distinct causes of action, and S. 17 of the Court-Fees Act was held to be applicable. In *Dhanukhdari* v. *Mani Sonar*,[49] where the plaintiff sued for recovery of possession with mesne profits, and in the alternative for assessment of fair and equitable rent, it was held that the alternative relief prayed for amounted to suit for declaration of title, with consequential relief, falling under S. 7 (iv) (*c*) of the Court-Fees Act.

600. (1) SUITS COMPRISING DISTINCT SUBJECTS.— It has been noticed above, that a suit on different hundies,[50] or for different deposits,[1] or on several pronotes,[2] or separate mortgages[3] have been held to comprise distinct subjects.

(2) SUITS FOR SEVERAL DECLARATIONS.—Other illustrations are to be found in suits for several declarations regarding separate alienations by a widow, brought by plaintiffs-reversioners contesting the alienations as unauthorised and unnecessary, and not to prejudice the plaintiff's reversionary interests after the death of the widow. A Court-fee of Rs. 10 must be paid in respect of each of the alienations in question.[4] Where a landlord sues a number of tenants, each having a separate interest that their lands are held under the *batai* system, and that they are wrongly recorded as paying cash rent, he must pay a Court-fee of Rs. 10 in respect of each set of tenants.[5] Conversely, where the landlord had obtained rent decrees at *bhauli* rates against 59 tenants in respect of various holdings situated in different villages, and later got settlement entries with respect to 78 separate holdings which were unsuccessfully contested by the tenants, and the tenants thereupon brought a declaratory suit against the landlord that their several holdings were fixed-rate holdings, and that the *jama* recorded in settlement papers was fraudulent: and the various decrees obtained by the defendant landlord were contrary to law,

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(48) 47 I.C. 886: compare, *Mukhlal Gir* v. *Ramdheyan Rai*, 44 I.C. 143. (*Held*, that S. 17 applies to cases in which two different reliefs may be applied simultaneously, not alternatively, to the wrong done to the plaintiff).

(49) 100 I.C. 913=6 Pat. 17=1927 Pat. 123=8 P.L.T. 366.

(50) *Vide* p. 502, *ante*.

(1) *Vide* p. 502, *ante*.

(2) *Vide* p. 502, *ante*.

(3) *Vide* p. 503, *ante*.

(4) *Daivachilaya Pillai* v. *Pounathal*, 18 Mad. 459.

(5) *Lachman Sahu* v. *Abdul Karim*, 51 I.C. 767=4 P.L.J. 299.

and unfit to be executed, it was held that the declarations asked for by 78 set of plaintiffs with regard to 78 separate holdings, and 59 separate decrees, were 78 separate causes of action in respect of the holdings, and 59 separate causes of action in respect of the decrees which they meant to get rid of, each of which was liable to a Court-fee of Rs. 10.[6] Similarly, where plaintiff sued (1) for a declaration that a certain decree was invalid, (2) for a reversal of the order passed in execution declaring two-thirds of certain property as not liable to attachment, and (3) for a declaration that the whole of certain family property was liable to attachment and sale in execution of the decrees, it was held that the Court-fee of Rs. 30 was required on appeal.[7] Where the plaintiff asked for a relief as to the non-liability of the property in suit to attachment and sale in execution of a decree, and also claimed as against all the defendants including the decree-holder and another for a declaration that the property was the joint family property of the plaintiff, a separate Court-fee for this separate declaration was held payable.[8] It was observed by the Allahabad Full Bench that the taxing Judge or taxing Officer is not concerned with the fact whether the declarations asked for by a plaintiff or an appellant are required for his protection, or are unnecessary in view of another declaration sought for in the suit or appeal. It is no part of their duty, on a question as to the sufficiency of a stamp or a fee to consider whether a plaintiff, or an appellant is asking for more declarations or reliefs than are required for his protection.[9]

(3) SUITS BY UNSUCCESSFUL CLAIMANTS.—Where an unsuccessful claimant, in proceedings under Order XXI, R. 63, Civil Procedure Code, brings a suit for declaration against the decree-holder, claiming that the property in question is not liable to attachment and sale in execution of the defendant's decree and he makes not only the execution-creditor but also the judgment-debtor in those proceedings parties to the suit, and asks for a declaration of the plaintiff's title to the property under the attachment as against the judgment-debtor, there are two substantial declarations asked for, which must be paid for separately.[10]

The nature of a suit filed by an unsuccessful claimant under the provisions of the Civil Procedure Code has been considered by their Lordships of the Privy Council in *Phul Kumari* v. *Ghanshyam*.[11] A suit filed under O. XXI, R. 63, is really a suit to

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(6) *Chetru Mahtan* v. *Muhammad Karim Naudaby*, 50 I.C. 328=4 P.L.J. 297.

(7) *Shambu Dyal Singh* v. *Ishwar Saran*, 75 I.C. 597=1923 All. 306.

(8) *Balkaran Rai* v. *Govind Nath Twari*, 12 All. 129 (161) (F.B.).

(9) *Ibid.* 12 All. 129 (161) (F.B.).

(10) *Moti Singh* v. *Kaunsilla*, 16 All. 308 (F.B.)=14 A.W.N. (1894), 109; also see and *cf. Dhondo Sakharam* v. *Govind Babaji*, 9 Bom. 20. (*Held*, that a Court-fee of Rs. 10 is sufficient in a claim suit by an unsuccessful objector, even though the plaintiff may pray in such a suit to be awarded possession).

(11) 35 Cal. 22 (P.C.); also see *Yellamaraju* v. *Gateli Vigneshwaradu*, 110 I.C. 554=1928 Mad. 840=28 L.W. 82=1928 M.W.N. 336.

set aside the order,, and a subsequent dispossession cannot be held to be a part of his cause of action.[12] The same view was taken in *Ambu* v. *Ketilamma*,[13] which was followed by the Madras Full Bench in the case of *Krishnan Soorayya* v. *Pathuma Bee*,[14] holding that a suit under (S. 283, old Code), O. XXI, R. 63, to establish the right claimed by an unsuccessful objector, is on a ground different from a suit for possession based on wrongful withholding of possession from the plaintiff after his title had been decreed in the previous suit.

(4) SUIT FOR DAMAGES AND INJUNCTION.—An appeal against a decree dismissing a suit for wrongful cutting and removing certain trees, and for grant of an injunction against the defendants restraining then from removing certain trees cut down, and awarding damages to the defendants under S. 95, Civil Procedure Code (S. 497, old Code), requires Court-fee on each head.[15]

(5) SUIT FOR INHERITANCE AND AS LEGATEE.—A suit to recover some properties by right of inheritance against plaintiff's brother and nephew, and to obtain other properties as a legatee, under a will, by cancelling a deed of gift in favour of the nephew, is chargeable with aggregate amount of fees to which the plaints and the memoranda of appeal in separate suits for the moveable and immoveable property would have been liable under the Act.[16]

(6) SUIT FOR POSSESSION AND MESNE PROFITS.—A Madras Full Bench ruling holds that claims for recovery of land and claims for *mesne* profits are separate causes of action. If a plaintiff sues for possession only when he might have joined in the same action claims for profits and damages, it is open to him to sue subsequently for the profits which became payable before the institution of suit, and which might have been included in such suit.[17]

(7) SUIT FOR PARTITION AND ACCOUNTS.—In a suit for partition and accounts, the plaint is to be stamped with Court-fee for partition plus *ad valorem* Court-fees on the approximate valuation for accounts.[18] Where the plaint in a suit for partition and accounts was properly valued, but on appeal the defendant-appellant noted that the appeal was only for a declaration, although the trial Court had cancelled the partition deed, had determined the question of titles to the properties, had directed partition of all the properties in suit, and had rendered the defendant liable for accounts; it was held that an appeal directed against a decree so comprehensive in scope, could not be described as an appeal for a

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(12) *Ibid.* 110 I.C. 554=1928 Mad. 840, *supra.*

(13) 14 Mad. 23=1 M.L.J. 28.

(14) 29 Mad. 151 (F.B.).

(15) *Misr Behari Lal* v. *Bhagwan Das*, 13 A.W.N. (1893) 220.

(16) *Mulchand* v. *Shibcharanlal*, 2 All. 676, (F.B.).

(17) *Ponnammal* v. *Ramamirada Aiyar*, 27 I.C. 679=7 M.L.T. 124 =28 M.L.J. 127=(1915) M.W.N. 130. Compare, *Kissory Lal Roy* v. *Sharut Chandra Majoomdar*, 8 Cal. 593=10 C.L.R. 359; also *Venkoba* v. *Subbanna*, 11 Mad. 151; and reference under Court-Fees Act, 16 All. 401= 14 A.W.N. 124; also see and *cf.* 54 Mad. 1=1930 Mad. 833.

(18) *Beni Madhab Sarkar* v. *Gobinda Chandra Sarkar*, 22 C.W.N. 669.

declaration, and the appellants were called upon to value the reliefs sought in appeal separately for purposes of Court-fees.[19] Where plaintiff not in possession, sued for partition with *khas* possession, the Patna High Court held that plaintiff must pay the fixed fee for partition, in addition to the *ad valorem* fee as in a suit for possession, as he will be entitled to partition only if he is in joint possession, and when he prays for both he must pay Court-fee for both the reliefs sought.[20]

(8) SUITS FOR REDEMPTION.—In a suit to redeem a mortgage for a certain sum on account of rent, not intended to be set off against the mortgage debt, the Court-fee should be computed on the principal amount of the mortgage debt, and on the claim on account of rent[21] as there are really two distinct causes of actions.[22] Where in a suit for redemption of a *kanom*, the plaintiff seeks to deduct from the *kanom* amount certain damages to which he claims to be entitled, he is bound to pay Court-fees not only on the *kanom* amount but also an *ad valorem* fee on the amount claimed as damages, as the question is not simply of taking an account of rents due on the original contract, but there is the additional cause of action that the defendant committed a tort.[23]

601. DIFFERENT CAUSES OF ACTION—SUITS FOR TWO OR MORE RELIEFS.—The cases in which the causes of action are distinct, and the plaintiff, or appellant, asks for two or more reliefs, are the cases that clearly fall under S. 17 of the Court-Fees Act. A suit comprised two subjects, *viz.*, (1) property in the costody of the Collector; (2) property in the plaintiff's possession. He asked for a bare declaration as to the former, and as to the latter he asked for a declaration with consequential relief. The plaint was held to distinctly state that the plaintiff laid claim to two distinct subjects, *i.e.*, two kinds of property, and the aggregate value of both the subjects constituted the value of the suits both for Court-fees and jurisdiction purposes.[24] A suit for possession of a house, for house-rent up to the date of suit, and for future house-rent, embraces "distinct subjects," within the meaning of S. 17 of the Court-Fees Act, and the plaint and the memorandum of appeal in it are chargeable with the aggregate amount of the fees, to which separate suits for the different causes of action brought separately would be liable.[25] A suit for

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(19) *Satis Chandra Ghose* v. *Kalidasi Dasi*, 68 I.C. 577=26 C.W.N. 177=1922 Cal. 203=34 C.L.J. 529.

(20) *Sitbaran Jha Pandey* v. *Lokenath Misr Pandey*, 3 Pat. 618=1924 Pat. 558=81 I.C. 1052.

(21) *Rama Varma Raja* v. *Kadara*, 16 Mad. 415.

(22) *Kannan Panikhar* v. *Karunakara*, 16 Mad. 328; but compare: *Eachœran Pattar* v. *Appa Pattar*, 19 Mad. 16 (F.N. 37, 38 *ante*.)

(23) *Govindan Nair* v. *Kanhirathotikayil Ithalutty*, 94 I.C. 557=1926 Mad. 542=50 M.L.J. 21.

(24) *Shidappa* v. *Rachappa*, 16 I.C. 1005=36 Bom. 628=14 Bom.L.R. 757.

(25) *Chedi Lal* v. *Kirath Chand*, 2 All. 682 (F.B.).

joint possession, and partition;[26] a suit to recover some properties by right of inheritance, and other properties as legatee;[27] a suit for damages, and injunction;[28] are some of the other illustrative cases which have been already noticed in the previous paragraphs of the comments. In *Ram Nidh* v. *Balkaran Singh*, it was held that in as much as in a suit for specific performance of a contract of sale and for possession of the property agreed to be sold, the relief for specific performance is not ancillary to the claim for possession, both reliefs should be paid for under S. 17, but this view is in conflict with some other rulings on the subject.[29]

602. COSTS IN APPEAL.—When apart from, and independently of, any other reliefs which an appellant seeks in an appeal from a decree, he seeks distinct relief on the ground that by the decree under appeal the costs of the parties in the proceedings which terminated with the decree have not been properly assessed or apportioned, the value of such distinct relief should be reckoned as part of the subject-matter in dispute for the purposes of the first schedule of the Court-Fees Act.[30] The Sind Judicial Commissioner's Court has held in *Valai Ram* v. *Karachi Bank*[31] that where an unsuccessful defendant appeals against a preliminary mortgage decree providing for the payment by mortgagor of the principal and interest up to date of suit, and also interest from date of suit up to the date fixed for redemption, the subject-matter in dispute in appeal is the amount awarded by the decree. No Court-fees are charged on costs awarded by the Court as they are within the discretion of the Court and do not strictly come within the purview of the subject-matter in dispute between the parties. When an appeal against costs is distinct and separate from the other parts of the appeal, Court-fees must be paid *ad valorem* on the costs decreed.[32]

603. CONSOLIDATION OF SUITS OR APPEALS.—Where matter for consideration in a number of appeals is the same, and parties are the same, the appeals may be consolidated into one appeal, but Court-fees must be paid separately for each according to the provisions of the Act. It was held by the CALCUTTA HIGH COURT, in *Moosa Soleman Salehji* v. *Secretary of State*,[33] that "there is no objection to consolidating a number

(26) *Sitbaran Jha Pandey* v. *Lokenath Missir*, 81 I.C. 1052=3 Pat. 618=5 P.L.T. 618=1924 Pat. 558.

(27) *Mul Chand* v. *Shibcharan Lal*, 2 All. 676 (F.B.).

(28) *Misr Behari Lal* v. *Bhagwandas*, 13 A.W.N. (1893) 220.

(29) 60 I.C. 654=23 O.C. 388; *cf.* 11 I.C. 228=14 C.L.J. 159; and 77 I.C. 542=45 M.L.J. 431=1924 Mad. 360.

(30) In re *Makhi* and in re *Raman*, 19 Mad. 350; cited in *Ghasitamal* v. *Jamiyat Rai*, 14 I.C. 284 (285)=118 P.L.R. 1912=120 P.W.R. 1912; followed in 6 O.C. 135 (138).

(31) 1927 Sind 251=104 I.C. 391.

(32) *Rowlins* v. *Lachmi Narain Jha*, 44 I.C. 50=3 P.L.J. 443=4 P.L.W. 223=1918 Pat. 264; also see 6 O.C. 135; 12 O.C. 17; 1892 P.J. 52.

(33) 1929 Cal. 135=117 I.C. 692=32 C.W.N. 776; also see *Kashi Prosad Singh* v. *Secretary of State*, 29 Cal. 140; and other cases under Sch. II, Art. 10, *post*.

of appeals in the exercise of the inherent jurisdiction of the Court, if the matter for consideration in a number of appeals is the same, and the parties are the same. But it is another matter when it is sought to invoke the aid of S. 17, Court-Fees Act, on the allegation that the memorandum of appeal in each of these cases should be consolidated into one memorandum of appeal, and treated as if it was one memorandum embracing two or more distinct subjects.'' The MADRAS HIGH COURT has held in the case of *Krishnayachandrulu*,[34] that as to inherent power of the Court to consolidate suits or appeals, there can be no question, but such power cannot be extended in a manner to conflict with the provisions of any enactment like the Court-Fees Act, or the express provisions of the Civil Procedure Code as regards the filing of appeals.[35] Where the case relates to a suit which could have been filed against several defendants, the provisions of S. 17 Court-Fees Act are imperative, because in the case of a suit embracing two or more distinct subjects, the plaint or memorandum of appeal should be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing each of such subjects would be liable under the Act.[36] Consolidation of suits or appeals may be allowed to prevent delay in the disposal of the cases, but the practice is not to consolidate claims against the will of the promovents, but to hear one after the other successively, subject to one set only of costs being allowed to them in the event of the Court finding at the hearing that the application for consolidation was resisted without sufficient grounds.[37] An Appellate Court has inherent power to consolidate appeals. ''Courts should however consider whether there is a case for consolidation having regard to the loss of revenue in Court-fees by allowing consolidation.''[38] When the court allows consolidation, it allows the parties to treat the consolidated appeals, whatever their number may be, as one and the parties applying for consolidation of their appeals may be allowed to join in one *vakalatnamah*.[39]

604. MAXIMUM LIMIT.—The rule laid down in S. 17 of the Court-Fees Act regarding multifarious suits, has been held to be subject to the proviso at the end of Art. 1, Sch. I, of the Act, which says that ''the maximum fee leviable on a plaint or a memorandum of appeal shall be Rs. 3,000'' so that the fee leviable in such suits cannot exceed that amount. Section 17 of the Act makes no provision for the proper fee to be charged; it merely lays down a general rule, that where a suit embraces two or more dis-

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(34) 1930 Mad. 376=53 Mad. 248=123 I.C. 203=58 M.L.J. 510 =31 M.L.W. 282 (F.B.).

(35) 1930 Mad. 376 (379) (F.B.), *supra.*

(36) *Ibid.*

(37) 22 Cal. 511 (Admiralty jurisdiction); (also see O. 11, R. 6, C. P. Code).

(38) *Vengu Naidu* v. *Deputy Collector*, 45 I.C. 468=8 L.W. 91=35 M.L.J. 272; followed in in re *Perumal Nadar*, 109 I.C. 651=27 L.W. 366=1928 M.W.N. 271=54 M.L.J. 595=1928 Mad. 463.

(39) 109 I.C. 651=1928 Mad. 463, *supra.*

tinct subjects, the plaint shall be charged with the aggregate amount of fees to which the plaint or memoranda of appeal in suits embracing separately each of such subjects would be liable under the Act. The words "not otherwise provided for in this Act" relate back to Ss. 7 and 8, and not to S. 17 and the proviso at the end of Art. 1, Sch. I of the Act applies generally, and fixes the maximum fee leviable on *any* plaint or memorandum of appeal at Rs. 3,000.[40] Where a number of land acquisition cases, concerning same parties, and in respect of plots of land contiguous to one another, and forming part of one estate, although in the occupation of different tenants, were consolidated, the Court-fee payable upon the value of consolidated appeals under S. 17 of the Court-Fees Act was held subject to the limitation under Art. 1, Sch. I, of the Act.[41]

Written examinations of complainants.

18. When the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which police-officers may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing under the provisions of the Code of Criminal Procedure, the complainant shall pay a fee of eight annas, unless the Court thinks fit to remit such payment.

Synopsis.

1. Amendments.
2. Complaint.
3. Cognisable offences.

605. AMENDMENTS.—

(i) *Bengal Act, IV of* 1922:—Under the Court-fees Amendment Act of Bengal (B.C. Act, IV of 1922), *a fee of one rupee* is substituted for a fee of eight annas for the Province of Bengal.

(ii) *Bihar and Orissa Act, II of* 1922:—In Bihar and Orissa, the fee of eight annas has been enhanced to *annas twelve.*

(iii) *Madras Act, V of* 1922:—Under the Madras Act, V of 1922, the fee of eight annas has been enhanced to a *fee of rupee one.*

(iv) In *Punjab,* similarly, the fee is Re. 1, now under local amendment.

(v) *United Provinces Act, IV of* 1922, which substitutes *twelve annas* for eight annas.

606. COMPLAINT.—This section prescribes a Court-fee of annas eight (now enhanced to Re. 1 in some provinces; and

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(40) *Raghobir Singh* v. *Dharam Kuar,* 3 All. 108.
(41) *Kashi Prosad Singh* v. *Secretary of State,* 29 Cal. 140.

annas twelve in some others), on the first or only examination of a complainant by a Magistrate, where

(1) the complainant has not already presented a petition with Court-fee prescribed;

(2) the offence (though a cognisable one) is,

(*a*) one of wrongful confinement, or

(*b*) one of wrongful restraint, or,

(3) the offence complained of is a non-cognisable one.

607. **COGNISABLE OFFENCES**.—Under Sch. II, Art. 1 (*b*) of the Court-Fees Act, a fee of annas eight is prescribed "when containing a complaint or charge of any offence other than an offence for which police-officers may, under the Criminal Procedure Code, arrest without warrant, and presented to any Criminal Court." In other words, a written complaint of a non-cognisable offence is liable to a Court-fee of annas eight; and, a complaint of a cognisable offence—including wrongful restraint, or wrongful confinement—is not liable to Court-fee.

But, under this section, the first or only "examination" relating to a non-cognisable offence, and also to two cognisable offences specified, is liable to Court-fee. The result is somewhat anomalous, in as much as a written complaint relating to wrongful restraint or wrongful confinement is not liable to such fee. The "examination" contemplated in this section is the first statement of the complainant recorded by a Magistrate under S. 200, Criminal Procedure Code. "The first or only examination" relating to a cognisable offence—not including S. 341 and 342 Indian Penal Code—is not liable to a Court-fee under this section. It is to be noticed that complaints of wrongful confinement and restraint were liable to stamp duty under the Act of 1867, but when Art. 1 (6) was altered, no corresponding change was made in S. 18. The anomaly is thus due to careless drafting.

Exemption of certain documents.

19. Nothing contained in this Act shall render the following documents chargeable with any fee.

(i) Power-of-attorney to institute or defend a suit when executed by an officer, warrant-officer, non-commissioned officer or private of His Majesty's army not in civil employment.

(ii) [*Rep. by the Repealing and Amending Act*, 1891 (*XII of* 1891).]

(iii) Written statements called for by the Court after the first hearing of a suit.

(iv) [*Rep. by the Cantonments Act*, 1889 (*XIII of* 1889)].

(v) Plaints in suits tried by Village Munsifs in the Presidency of Fort St. George.

(vi) Plaints and processes in suits before District Panchayats in the same Presidency.

(vii) Plaints in suits before Collectors under Madras Regulation, XII of 1816.

(viii) Probate of a will, letters of administration [and, save as regards debts and securities, a certificate under Bombay Regulation, VIII of 1827], where the amount or value of the property in respect of which the probate or letters or certificate shall be granted does not exceed one [two—Bengal] thousand rupees.

(ix) Application or petition to a Collector or other officer making a settlement of land-revenue, or to a Board of Revenue, or a Commissioner of Revenue, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interests therein, if presented previous to the final confirmation of such settlement.

(x) Application relating to a supply for irrigation of water belonging to Government.

(xi) Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land-revenue by a person holding under direct engagement with Government, land of which the revenue is settled, but not permanently.

(xii) Application for service of notice of relinquishment of land or of enhancement of rent.

(xiii) Written authority to an agent to distrain.

(xiv) First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.

(xv) Bail-bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise.

(xvi) Petition, application, charge or information respecting any offence when presented, made or

laid to or before a Police officer, or to or before the Heads of Villages or the Village Police in the territories respectively subject to the Governors in Council of Madras and Bombay.

(xvii) Petition by a prisoner, or other person in duress or under restraint of any Court or its officers.

(xviii) Complaint of a public servant (as defined in the Indian Penal Code), a municipal officer, or an officer or servant of a Railway Company.

(xix) Application for permission to cut timber in Government forests, or otherwise relating to such forests.

(xx) Application for the payment of money due by Government to the applicant.

(xxi) Petition of appeal against the chaukidari assessment under Act No. XX of 1856, or against any municipal tax.

(xxii) Application for compensation under any law for the time being in force relating to the acquisition of property for public purposes.

(xxiii) Petitions presented to the Special Commissioner appointed under Bengal Act, No. II of 1869 (*to ascertain, regulate and record certain tenures in Chota Nagpur*).

(xxiv) [Petitions under the Indian Christian Marriage Act, 1872, sections 45 and 48.]

Synopsis.

1. Scope.
2. Legislative changes.
3. Clause 1—Power-of-attorney.
4. Vakalatnama.
5. Clause III—Written statement.
6. Written statement claiming a set-off.
7. Written application to set aside award.
8. Written statement in partition suits.
9. Clause V—Suit in Munsiff's Court.
10. Clause VIII—Probate and Letters of Administration.
11. Clause IX—Application relating to assessment.
12. Clause XI—Applications relating to cultivation.
13. Clause XIII—Distinct proceedings.
14. Clause XVII—Petition by a prisoner or a person in distress.
15. Clause XVIII—Complaint of a public servant.
16. Clause XX—Application for refund of costs.
17. Clause XXII—Application for compensation.

608. **SCOPE**.—This section enumerates the various documents which are exempt from payment of Court-fee. Section 35, further reserves the rule-making power of the Imperial and Local Governments, under which other exemptions or partial remissions, are notified.

609. **LEGISLATIVE CHANGES—Clause VIII** —The words "and, save as regards debts, and securities, a certificate under Bombay Regulation VIII of 1827," were substituted for the original words "and certificate mentioned in the first schedule to this Act annexed, No. 12," by the Succession Certificate Act of 1889, S. 13 (2). The words "one thousand rupees" in this clause have been changed to "two thousand rupees" in Bengal and Assam by Local Amendment Acts of 1922. Clause XXIV—This clause was substituted by Act XV of 1872 (The Indian Christian Marriage Act) for the original clause which ran thus:—"Petitions under XIV and XV, Vict. Ch. 40, S. 5, or under Act V of 1852, S. 9."

610. **CLAUSE I—POWER-OF-ATTORNEY**.—A power-of-attorney "to institute or defend a suit," is distinguishable from a "*mukhtarnama* or *vakalatnama*," presented for "the conduct of any case," and if the power-of-attorney is not filed on the record as an authority for the conduct of a case, but is used merely for the purpose of instituting or defending a suit, no Court-fee is payable thereon, under Sch. II, Art. 10, of the Court-Fees Act.

This clause expressly exempts a power-of-attorney executed by an officer, warrant officer, non-commissioned officer, or private of His Majesty's Army, not in civil employment.

611. **VAKALATNAMA**.—Garth, C. J., held in a Calcutta case,[42] that if a pleader is authorised, by the *vakalatnama* under which he acts, to receive monies or documents for his client in the course of the cause, which he is empowed to conduct, or as a consequence of the decree or any order of the Court in such cause, a Court of justice might legally and with propriety direct a public officer to pay money or make over valuable documents to the pleader, provided that such money or documents have become receivable by the client in the ordinary course of the suit, or in consequence of the order or decree. A document authorizing a vakil to apply for copies of record from the Collector's office is properly stamped with a Court-fee stamp under Art. 10 (*a*) of Sch. II, of the Court-Fees Act, and does not require to be stamped as a power-of-attorney under Art. 50 (*b*) of Sch. I of the Indian stamp Act.[43] A power-of-attorney in favour of a person, who is not a mukhtar or pleader, to receive payment from a certain officer on behalf of some parties interested, would require a stamp duty under the Indian stamp Act.[44] The ALLAHABAD Full Bench,

(42) *Anonymous*, 3 Cal. 767.

(43) Reference under S. 46, Stamp Act, 9 Mad. 146 (F.B.).

(44) Reference under S. 46, Stamp Act, 9 Mad. 358 (F.B.); also see *Parma Nand* v. *Sat Prasad*, 33 All. 487; but compare: *Ganpat* v. *Prem Singh*; 202 P.L.R. 1912 (F.B.).

holds that a document authorizing holder, who is not a certificated mukhtar or pleader, to appear and do all acts necessary for the execution of a decree of a Court, required to be stamped as a power-of-attorney under the Stamp Act, and not as a *vakalatnamah or mukhtarnama* under Sch. II, Art. 10, of the Court-Fees Act,[45] which appear to be restricted to documents given to and presented by duly certified mukhtars and pleaders under the Legal Practitioner's Act.[46] But, this ruling was dissented from by a Full Bench of the Punjab Chief Court, in *Ganpat* v. *Prem Singh*[47] where it was held that a power-of-attorney empowering a person who is neither a *Vakil* of a Court nor a certificated *Mukhtar* of a Court to represent another in a Civil Court is governed by Art. 10 of Sch. II of the Court-Fees Act. The term *mukhtarnama*, by its mere juxtaposition to *vakalatnama*, is not taken to indicate that a mukhtar or attorney must be a legal practitioner, because a *Vakil* usually is a legal practitioner.[48] The Court-Fees Act is the excluding Act while the Stamp Act applies to any document not excluded from its provisions by the Court-Fees Act.[49]

612. **CLAUSE III: WRITTEN STATEMENT.**—A written statement is not chargeable with a Court-fee. A written statement is the pleading of a party presented to Court. Under O. VIII, R. 1, Civil Procedure Code, "the defendant may, and, if so required by the Court, shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence". Written statements called for by the Court after the first hearing are specially exempted, under this clause, from a fee. The "*first hearing*" has been held to mean the day on which the issues are framed.[50] The word 'hearing' is not defined in the Civil Procedure Code, and is used in the different rules with a view to state the different purposes for which a date of hearing of the suit is fixed.[1] The Calcutta High Court vaguely expresses itself to mean "the date when for the first time the case is called on for hearing, and is really gone into".[2] Order 10, R. 1, indicates that the *first hearing* is the date on which the "Court shall ascertain from each party or his pleader whether he admits or denies, such allegations or facts as are made in the plaint or written statement if any of the opposite party". Thus, in cases in which issues have to be framed, the first hearing will be the date on which such issues are framed. A written statement of his case tendered by a party to a suit at any time before or at the first

(45) 33 All. 487=8 A.L.J. 378=9 I.C. 617.

(46) *Ibid.* 33 All. 487 (489).

(47) 202 P.L.R. 1912=15 I.C. 122=108 P.W.R. 1912 (F.B.).

(48) 202 P.L.R. 1912=15 I.C. 122=108 P.W.R. 1912, *supra*, (F.B.).

(49) *Ibid.*

(50) *Talewar Singh* v. *Bhagwan Das*, 8 C.L.J. 147 (148)=12 C.W.N. 312; also see *Taibunnissa Begum* v. *Jagdip Pandey*, 78 I.C. 489=2 P.L.R. 1=1924 Pat. 517; followed in *Chidambaram Chettiar* v. *Parvathi Achi*, 93 I.C. 16=1926 Mad. 347 (349)=23 M.L.W. 69=1926 M.W.N. 156.

(1) *Abdul Rahman* v. *Shib Lal Sahu*, 63 I.C. 570=1922 Pat. 252 (254) =6 P.L.J. 650=2 P.L.T. 572.

(2) *Taran Mandal* v. *Raj Chandra Mandal*, 50 I.C. 296.

hearing of the suit, is not liable to any Court-fee, and may be written on plain paper.[3] In the Court-Fees Act there is no *express* provision charging such statements with any fees, and what is not *expressly* provided for in it cannot be supplied by implication.[4] These written statements are quite distinct from applications[5] and a written statement filed by a defendant in a civil suit at the first hearing does not, under the existing law, require a Court-fee stamp.

613. WRITTEN STATEMENT CLAIMING A SET-OFF.—A written statement pleading a *set-off, or a counter-claim,* is of the nature of a plaint, and is liable to be stamped under Art. 1, Sch. I of the Court-Fees Act.[6] The exemption under Cl. 3, of written statements called for by the Court after the first hearing, must be confirmed to written statements in which no set-off or counter-claim is pleaded. An answer by plaintiff to defendant's claim of set-off, is of the nature of a written statement, and needs no fee; but the rules on the Original Side of Madras High Court require a fee of Rs. 10 on such answers to a claim or set-off.

614. WRITTEN APPLICATION TO SET ASIDE AWARD.—Section 19 of the Court-Fees Act which exempts a written statement in a pending suit makes no mention whatever of written objections to an award. An application to set aside the award, or written objections to an award, fall under Art. 1 (*b*) of the second schedule of the Court-Fees Act, and it cannot be filed or exhibited or made use of in any manner unless the prescribed fee of eight annas is paid on it. It clearly does not fall within the exceptions provided for by S. 19 of the Court-Fees Act.[7]

615. WRITTEN STATEMENT IN PARTITION SUITS.—"There is nothing in the law which requires a defendant in a partition suit to pay Court-fees in order to have his share separately allotted to him; he has merely to ask for it in his written statement, and it is open to the Court to order the shares of the defendants in a partition suit to be separated as amongst themselves. The decree that is finally drawn up in the partition suit has to be stamped as an instrument of partition under the Stamp Act

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(3) *Nagu* v. *Yeknath,* 5 Bom. 400=5 Ind. Jur. 650.

(4) *Ibid.* 5 Bom. 400.

(5) *Ibid.* 5 Bom. 400; also see *Cherag Ali* v. *Kadir Mahomed,* 12 C.L.R. 367 (370); and *Punjab Stamp Manual,* 1900, page 261, para. 27.

(6) *Amir Zama* v. *Nathumal,* 8 All. 396=6 A.W.N. (1886), 159 (*held* that the Court-fee payable on the amount of a claim sought to be set-off by the defendant in a suit should be the same as for a plaint in a suit for that amount) followed in *Baishri Majirajbai* v. *Narotam Hargovan,* 13 Bom. 672; and in *Chenappa* v. *Raghunatha,* 15 Mad. 29=1 M.L.J. 598: *contra* see *Fakir Chandra* v. *Gisborne and Co.,* (1903) 8 C.W.N. 174 (*held,* that a written statement, in which a set-off is claimed is not chargeable with a Court-fee as on a plaint; and compare *Nawbut Pattak* v. *Mahesh Narayan,* 32 Cal. 654=1 C.L.J. 364 (set-off held to have same effect as a plaint in a cross suit for purposes of Civil Procedure Code).

(7) *Adamali* v. *Abdulali,* 107 I.C. 223=1928 Sind 87.

and except the stamp duty levied on the decree, no other duty as Court-fee is payable by the defendants.''[8]

616. CLAUSE V—SUIT IN MUNSIFF'S COURT.—This Clause exempts plaints in suits *tried* by the Village Munsiffs in the Presidency of Fort St. George: and, obviously its application could not be extended to cover suits merely instituted in such Court, but withdrawn for trial by a District Munsiff.

617. CLAUSE VIII—PROBATE AND LETTERS OF ADMINISTRATION.—By Bengal Act IV of 1922, and Bihar and Orissa Act II of 1922, the words ''one thousand'' in the original section, have been locally amended to read ''two thousand rupees.''

No duty is payable in respect of a grant of Probate or Letters of Administration where the value of the estate, after making the deductions specified in Annexure B of Schedule III to the Court-Fees Act, is less than Rs. 1,000.[9] If S. 19, Cl. (viii) stood alone, a person leaving a gross estate of 1,500, but debts amounting to 600, would be taken as leaving an estate over Rs. 1,000 liable to Court-fee duty, while a person beneficially interested in an estate worth Rs. 900 without any debts would be exempt under the clause. But, the ALLAHABAD HIGH COURT reads this clause with S. 19 I, which expressly provides that the petitioner for Letters of Administration must file a valuation in accordance with the third schedule, and that the fee is to be paid *in accordance with such valuation.* Under the Form of Valuation given in third schedule, the petitioner is allowed by law to deduct the debts, funeral and testamentary expenses, and in Annexure A, the ''net total'' is made the total after deducting all the items which are set forth in Annexure B, and which the petitioner for Letters of Administration is allowed by law to deduct.[10] The CALCUTTA HIGH COURT, has similarly, observed in the case of *Harriett Teviot Kerr,*[11] that the true mode of interpreting a statute like the Court-Fees Act, is not to consider individual sections, but to take them as a whole: and, that in order to determine what is the proper amount of duty payable on an application for probate in respect of the estate left by a deceased person, the Court-fee should be calculated upon the net value of the estate obtained by the deduction of the amount of the debts from the gross value of the estate. Similarly, the LOWER BURMA CHIEF Court, has held, in In re *Chin Ah Yaing*[12] that the words ''the amount or value of the property'' refer to nett value. Therefore, where the nett

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(8) *Hemchandra Mahto* v. *Prem Mahto,* 90 I.C. 739=1925 Pat. C.W.N. 330=1926 Pat. 154=7 P.L.T. 295 (per *Kulwant Sahai, J.*: citing *Nawab Mir Sadruddin* v. *Nawab Nuruddin,* 29 Bom. 79=6 Bom.L.R. 834; *cf. Abdul Kadir* v. *Bapubbai,* 23 Bom. 188 and *Murarrao* v. *Sitaram,* 23 Bom. 184; which were not pure suits for partition).

(9) In the goods of *Mrs. E. E. W. Meik,* 46 I.C. 865=40 All. 279.

(10) *Ibid.* 46 I.C. 865 (867)=40 All. 279.

(11) 21 I.C. 502=18 C.L.J. 308=18 C.W.N. 121.

(12) 24 I.C. 823=7 L.B.R. 359=7 Bur.L.T. 275.

value of a property in respect of which Probate or Letters are granted does not exceed Rs. 1,000, the Probate or Letters are not chargeable with any fees. A contrary view was taken by the Calcutta High Court in the case of *Collector of Maldah* v. *Nirade Kamini Debya*[13] where this exemption under S. 19 (viii) and No. 11 of Sch. II of Court-Fees Act has been held applicable only in cases where the *gross* value of the property does not exceed one thousand rupees.

618. Cl. IX. APPLICATION RELATING TO ASSESSMENT.—This clause has been held not to apply to *jamabandi* petitions, which are not strictly settlement proceedings, relating to assessment of land, or to ascertainment of rights in land. Such applications are thus not exempt from Court-fee.[14]

619. Cl. XI. APPLICATIONS RELATING TO CULTIVATION.—This clause refers to cases of ryotwari as opposed to Zamindari tracts where petition is made to an officer of land revenue, by a person holding under direct engagement with Government, for leave to occupy under Government or relinquish land for which the revenue is settled but not permanently.

An application for occupation of land reserved for public purposes is not exempt under this clause.[15] But applications to the Government for sites for building purposes are exempt from Court-fee.[16]

620. Cl. XIII. DISTRAINT PROCEEDINGS.—The procedure for recovery of rent by distraint is laid down for Bengal, in Ch. XII of the Bengal Tenancy Act, VIII of 1855: and, for Madras, in Ch. VI of the Madras Estates Land Act, I of 1908.

621. Cl. XVII. "ANY COURT OR ITS OFFICERS" PETITION BY A PRISONER, OR A PERSON IN DISTRESS.—The Court-Fees Act applies to both Civil and Criminal Courts, and Cl. 17 of S. 19 is held to apply to the case of a person in duress, or under restraint of a Civil Court. The provisions of this clause are not limited to petitions directly connected with duress, and no Court-fee is payable where a judgment-debtor appeals against the order rejecting his application to the Court, to be declared an insolvent, made whilst in custody, under provisions of Civil Procedure Code.[17]

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(13) 15 I.C. 621=17 C.W.N. 21.

(14) Proceedings of the Board of Revenue, Madras, No. 269; dated 18th March, 1888.

(15) Proceedings of the Board of Revenue, Madras, No. 907; dated 26th October, 1888. (See *Muthusami Ayyar*, p. 170.)

(16) Proceedings of the Board of Revenue, Madras, dated 27th February, 1897. (See *Muthusami Ayyar*, p. 171.)

(17) *Kali Prosad Banerji* v. *Messrs. Gisbarne and Co.*, 10 Cal. 61=13 C.L.R. 156.

This ruling of the Calcutta High Court has been relied upon by the NAGPUR JUDICIAL COMMISSIONER'S Court, in *Emperor* v. *Maroti Teli*,[18] in support of its practice that the clause is applied to a petition presented by a prisoner not personally but by his vakeel. Similarly, the RANGOON HIGH COURT has held, that a petition of appeal or revision signed and filed by an advocate or pleader on behalf of a prisoner, under an authority signed by the prisoner, need not bear a Court-fee stamp.[19] It was held by the UPPER BURMA JUDICIAL COMMISSIONER'S COURT, that the Court-Fees Act deals purely with fiscal matters and like and that all other statutes imposing pecuniary burdens, or encroaching upon or qualifying the rights of the subject, must be interpreted in favour of the subject. Consequently, an application for bail signed only by the advocate of a prisoner is an application made by the prisoner himself and, under S. 19, Cl. (XVII) Court-Fees Act, does not require it to be stamped.[20] These cases are relied on by the ALLAHABAD HIGH COURT for holding that a petition filed on behalf of a prisoner by an advocate is a petition presented by a prisoner, and is within the exemption from Court-fees under Cl. 17, S. 19 and the fact that it was an adjournment application made by the counsel for his personal convenience is immaterial.[21]

622. Cl. XVII. COMPLAINT OF A PUBLIC SERVANT.— The term "complaint," is defined in the Criminal Procedure Code S. 4 (*h*), to mean the allegation made orally or in writing to a Magistrate with a view to his taking action under the Code, that some person whether known or unknown has committed an offence, but it does not include the report of a Police Officer. A Public Servant is defined in S. 21 of the Indian Penal Code; and this comprehensive definition includes a Municipal officer, which is expressly mentioned in Cl. XVIII of the Court-Fees Act, somewhat redundantly. No fee is leviable on a complaint by a Municipal officer, and where process fees were levied on complaints brought by the officers of a Municipality against various persons, the accused were held not liable to refund, under S. 31, what was illegally levied from the complainants.[22] A complaint by a Munsiff under S. 168, Criminal Procedure Code, does not require to be stamped; and the fact that it does not bear the seal of the Munsiff's Court, is immaterial.[23] A cantonment authority is not a public officer, as defined in Criminal Procedure Code and where

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(18) 45 I.C. 158=14 N.L.R. 77=19 Cr.L.J. 494, follows 10 Cal. 61 =13 C.L.R. 156.

(19) In re Court-Fees Act, S. 19 (xvii), 1924 Rang. 160=1 Rang. 510 =76 I.C. 869=25 Cr.L.J. 277: (cites *Jaganath Kahar* v. *King-Emperor*, 4 U.B.R. 72).

(20) *Jaganath Kahar* v. *King-Emperor*, 65 I.C. 553=4 U.B.R. 72=23 Cr.L.J. 122.

(21) *Bharalal* v. *Emperor*, 1930 All. 261=11 L.R.All.Cr. 45=1930 A. L.J. 682=13 A.I.Cr.R. 275=126 I.C. 827=52 All. 542=31 Cr.L.J. 1121 =1930 Cr.C. 373.

(22) *Queen-Empress* v. *Khajabhoy*, 16 Mad. 423.

(23) 5 Bom.H.C.Cr.Cas. 104.

the police prosecutions are instituted on behalf of a cantonment authority, process-fee and diet money for witnesses is to be Collected from the cantonment authority. But, complaint from a cantonment authority is exempt from Court-fee under this clause, as a cantonment authority is a "public servant" within the meaning S. 21, Indian Penal Code.[24]

623. Cl. XX. APPLICATION FOR REFUND OF COSTS.— An application for refund of money deposited for the costs of preparing a paper book, etc., for an appeal to Privy Council, is not an applicatoin for payment of money due by Government to the applicant within the meaning of S. 19, Cl. XX: and where such an application was presented to the High Court, it was held liable to a Court-fee of Rs. 2 under Art. 1, Sch. II of the Act.[25] So also an application by a petitioner for a life certificate to enable him to draw his pension at some other place or through an agent is not an application for the payment of money due by the Government, and is not exempted by Cl. XX of S. 19.[26] An application for refund of Court-fee is not chargeable, as it is covered by S. 19, Cl. XX of the Act.[27] The repayment of a deposit is very different from the refund of a Court-fee.[28]

624. Cl. XXII. APPLICATION FOR COMPENSATION.— An application for compensation under the Land Acquisition Act need not be stamped. An application for payment of the compensation money, made to a land acquisition officer, which is sent to a Civil Court on a reference continues to be an application for amount awardable in respect of acquisition of property, and this clause exempts it from payment of any Court-fee.[29]

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(24) K. O. 3364, Mis., dated 30th August, 1929.

(25) *Haridasi* v. *Gopesdwar*, 1923 Cal. 599=27 C.W.N. 646=77 I.C. 619.

(26) *Punjab Stamp Manual*, 1900, p. 265; para. 27.

(27) *Jag Narain Pande* v. *Mata Badal*, 1932 All. 590.

(28) Compare *Haridasi* v. *Gopesdwar*, 1923 Cal. 599, *supra*.

(29) *Gazette of India*, dated 26th February, 1870.

CHAPTER III-A

PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION.

Relief where too high a court-fee has been paid.

19-A Where any person on applying for the probate of a will or letters of administration has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid too high a court-fee thereon, if, within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Chief Controlling Revenue-authority [for the local area] in which the probate or letter has or have been granted,

and delivers to such authority a particular inventory and valuation of the property of the deceased verified by affidavit or affirmation,

and if such authority is satisfied that a greater fee was paid on the probate or letters than the law required,

the said authority may—

(*a*) cancel the stamp on the probate or letters if such stamp has not been already cancelled;

(*b*) substitute another stamp for denoting the court-fee which should have been paid thereon: and

(*c*) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

Synopsis.

1. Amendments.
2. Scope.
3. Valuation of property.
4. Refund.
5. Discretion of revenue authority.

625. **AMENDMENTS**.—The words "of the province" were deleted, and the words "for the local area" were inserted by the Court-fees Amendment Act X of 1901. This Chapter was inserted by S. 6 of the Probate and Administration Act, XIII of 1875.

626. SCOPE—Payment of duty.—(*a*) This section provides for refund of any excess Court-fee paid in respect of probate of will, or letters of administration where the valuation of deceased's property was over-estimated, and the Chief Controlling Revenue authority is authorised to refund the excess when an application is made *within six months* after the true value of the property has been ascertained. Where an application for probate is made, and the fiat of the Judge is obtained on the application, this can only be read as an order that probate shall issue to the petitioner upon his complying with the statutory provisions and the rules of the Court. One of the statutory provisions with which the petitioner must comply is that he must bring in the necessary stamps. The document can be received only when the prescribed fee has been paid.[1]

(*b*) NATURE OF THE DUTY LEVIED.—The sum charged under the provisions of the Court-Fees Act upon a grant of probate or letters of administration is not a tax or duty levied upon the property upon which the probate or administration operates, but is merely a fee levied by the Court issuing the probate or Letters of administration for the work done in this connection, and must be paid according to the scale prescribed in the Province in which the grant is made, irrespective of the fact whether the whole of the property in respect of which the grant is made is or is not situate within that Province.[2]

(*c*) PROBATE-DUTY—LOCALITY OF ASSETS.—Where S. died in England and probate of his will was obtained in England, and he left a large amount of property and credits in Bombay, and he was a partner in the London firm, which had branches in Bombay, and Calcutta, *held*, that the deceased's share in the partnership assets in India, were not liable to probate duty in India, as the partnership business was carried on in London, at its Head Office.[3]

627. VALUATION OF PROPERTY.—(*a*) UNCERTAINTY OF REALISATION.—The uncertainty of recovering a debt due to the estate of a deaceased person is not a sufficient ground for a proportionate reduction of the fee payable in respect of a will. Exemption is not allowed on the ground that judgment-debts though not barred by limitation are supposed to be unrealisable with reference to the present circumstances of the judgment-debtors.[4]

(*b*) VALUE OF A CHOSE IN ACTION.—Where there is no material upon which the Court can assess the value of a chose-in-action, there is nothing to prevent the Court from accepting the

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(1) *Alamelammal* v. *P. N. K. Suraya Prakasa Roya*, 31 I.C. 491=38 Mad. 988=29 M.L.J. 680.

(2) In the goods of *G. T. Williams, deceased*, 75 I.C. 466=50 Cal. 597=27 C.W.N. 812=1924 Cal. 115.

(3) In the goods of *Sir Albert A. D. Sasoon*, deceased, 21 Bom. 673=compare in the goods of March, (1879) 4 Cal. 725.

(4) In the goods of *Ram Chander Ghose*, 24 Cal. 567; citing In the goods of *Beake*, 13 Beng.L.R. App. 24.

valuation of the person applying for probate.[5] But the mere fact that an item of property is the subject of litigation does not in itself prevent the value of the property being assessed for the purpose of stamp duty on an application for probate. The question is one of fact.[6] Accordingly, where the deceased's estate consisted of property in possession to the value of Rs. 125 and a chose in action for 17,000, there was nothing to enable the Court to determine the amount or value of the right which the deceased was seeking to enforce in the suit, and it could not be said that the petitioner, in assessing the amount or value of the estate at a sum under Rs. 1,000 had under-estimated its value. The results of the suit would give some indication as to the value.[7]

(*c*) VALUATION ON DATE OF APPLICATION.—In the case of shares the Court-fee is chargeable on the value as at the date of application for probate, and subsequent changes do not alter the amount of Court-fee payable. A rise or fall at the time of realization may or may not prove the application value to have been wrong. This rule is easily applicable in the case of stock and shares, but the principle is the same in respect of other property.[8]

628. **REFUND**.—The theory underlying the refund is that the sum charged upon a grant of probate or letters of administration is merely a fee levied by the Court issuing the probate or letters of administration for the work done in this connection; and this is no less the case because the fee is levied upon the value of the property. This fee is payable on the scale in force at the place of the grant in respect of all properties covered by the probate wherever situate.[9]

629. **DISCRETION OF REVENUE AUTHORITY**.—The refund *may* be allowed under this section, but is not obligatory. It is merely discretionary with the Chief controlling revenue authority, to cancel the stamp on the probate, to substitute therefor a stamp for the proper amount of Court-fee and to refund the difference in fee in money. The period of six months cannot be extended.[10]

Relief where debts due from a deceased person have been paid out of his estate.

19-B. Whenever it is proved to the satisfaction of such authority that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount or value of the estate, reduces the same to a sum

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(5) In the goods of *Abdul Aziz*, 23 Cal. 577.

(6) *Saldanha* v. *The Secretary of State*, 24 Mad. 241.

(7) *Ibid.*

(8) In the estate of *A. C. MacMillan*, deceased, 14 I.C. 804 (807).

(9) In the goods of *G. T. Williams*, deceased, 75 I.C. 466=50 Cal. 597 =1924 Cal. 115.

(10) Proceedings of the Board of Revenue, Madras, No. 1359 R. Mis., dated 23rd October, 1911; and No. 1089 R. Mis., dated 28th August, 1913.

which, if it had been the whole gross amount or value of the estate, would have occasioned a less court-fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act,

such authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said authority may allow such further time for making the claim as may appear to be reasonable under the circumstances.

Comments.

1. Scope.
2. Mode of calculation of estate, left by deceased.
3. Property subject to mortgage or annuity.
4. Debts due by the deceased.

630. **SCOPE**.—This section provides that where an executor or administrator has discharged the debts of the deceased subsequent to grant of the probate, out of the estate thereby reducing its value to a sum less than that for which probate duty has been paid, a refund of the difference between the fee paid, and the fee payable, may be obtained, on application to the Chief Controlling Revenue authority, within a period of 3 years, which period can be extended in the discretion of the Revenue Authority, if in consequence of a legal proceeding the debt has not been ascertained and paid, or the assets of the deceased have not been realised.

This section follows the provisions of English law,—51 Geo. III. C. 184, S. 38: which governs the refund of any fee that may have been paid on amounts for which the same is not leviable.

631. **MODE OF CALCULATION OF ESTATE LEFT BY DECEASED**.—Sch. I, Art. 11, of the Court-Fees Act, as amended by Act VII of 1910, provides for a sliding scale of duty on the amount or value of the property in respect of which the grant is made. The duty is 2 per cent. when the amount or value of the property exceeds Rs. 1,000, but does not exceed Rs. 10,000. It is $2\frac{1}{2}$ per cent. when the amount exceeds Rs. 10,000 but is below Rs. 50,000; and the duty is 3 per cent. when such amount or value exceeds Rs. 50,000. It has been pointed out by the Calcutta High Court, in the *goods of Harriett Teviot Kon*,[11] that some difficulty in the application of this provision arises by reason of the Court-

(11) 21 I.C. 502=18 C.W.N. 121.

Fees Act having been amended piece-meal from time to time. The true mode of interpretation is, therefore, not to consider individual sections, but to take them as a whole and to give effect to the legislative intent upon a particular matter. From this point of view, it was held that the fee should be calculated upon the nett value of the estate obtained by the deduction of value of the estate.[12]

632. PROPERTY SUBJECT TO MORTGAGE OR ANNUITY.—The judicial decisions of Calcutta and Bombay bearing on the point were examined by Sir Ashutosh Mookerjee, and it was held that the ruling in *Collector of Maldah* v. *Nirode Kamini Debya*,[13] was of doubtful value. The decision, by Sir Richard Couch, C. J., in *In the goods of Ramchandra Das*,[14] was given in 1872, long before the amendment of the Court-Fees Act in 1899, and on the construction of Art. 12 as it stood at the time. But, the law has been materially altered by subsequent legislation. In the case of *In the goods of Peter Innes*[15] it was ruled by Norman, C. J., that when letters of administration are granted in respect of property subject to a mortgage, the value of the property, within the meaning of Art. 11 of the First schedule of the Court-Fees Act, is the value of the entire property, *less the amount of the incumbrance*, because this is the value of that with which the administrator is to deal. The same view was accepted in *In the goods of Charles Edward Maclean*,[16] where it was held that the term value in Art. 11 means "market-value" and that the market-value of mortgaged property is the value of the equity of redemption and that only. To the same effect is the decision of Westropp, C. J., in *In the goods of Ramchandra Lakshmanji*.[17] Thus, the reasonable construction of the expression "value of the property" in Art. 11 has been held to mean the "market-value" of the property left after deduction of the amount of the debt.[18] In other words, for the purposes of Art. 11 of the First schedule, the expression "the amount or value of the property," signifies what is described as the nett total in Annexure A in Sch. III, obtained by the deduction, of the amount shown in Annexure B, as not subject to duty, from the gross valuation of the moveable and immoveable property left by the deceased.[19] Sir Richard Garth, C. J., held in *In the goods of Rushton, deceased*,[20] that where it appeared that property disposed of by a will was bequeathed to the testatrix subject to the payment thereout of an

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(12) 21 I.C. 502=18 C.W.N. 121.

(13) 15 I.C. 621=17 C.W.N. 21 (Dft. and N. approved in 21 I.C. 502).

(14) 18 W.R. 153=9 Bom.L.R. 30 (*ad valorem* fee charged on the value of the house, and not on rent of it).

(15) 16 W.R. 253=8 B.L.R. app. 43.

(16) (1874) 6 N. W. P. H. C. R. 214.

(17) 1 Bom. 118 (value of annuity is its market-value, and not ten times the amount of a yearly payment).

(18) 21 I.C. 502 (508), *supra*. Per *Sir Ashutosh Mukerjee*.

(19) In the goods of *G. A. Quiningborough*, 30 I.C. 958=20 C.W.N. 591 (Per *Sir Ashutosh Mookerjee*).

(20) 3 Cal. 736.

annuity for life to a person who survived her, the *ad valorem* fee prescribed by Sch. I, Cl. 11 of the Court-Fees Act ought to be levied upon the value of the property, less the capitalized value of the annuity. Where the testator had a mere right of action in respect of a house bequeathed, the value of such right was impossible to determine, and the petitioner was exempted from payment of probate duty until after the decision of the suit in his favour.[21] Where duty is paid calculated on the amount or value of the property, without deducting the debts due by the deceased,[22] a refund of duty may be obtained under S. 19-B of the Court-Fees Act, as amended by Act XIII of 1875.[23] Similarly, where exemption is disallowed in respect of supposed unrealizable assets," being judgment-debts not barred by limitation, a refund could be had under S. 19-B of the Act, if the value subsequently ascertained is less than the value on which probate duty is paid.[24]

633. **DEBTS DUE BY THE DECEASED.**—They mean only such debts which the testator was bound to pay, and for which his estate is liable to be proceeded against. Legacies or trusts provided in the will are not to be included in debts due from the deceased.[25] Accordingly, where the testator was bound, under a marriage settlement, to provide for his children, and had made his son as executor to make the necessary provision, it was held that the debt was a debt payable by the deceased, for which remission could be granted.[26]

Relief in case of several grants.

19-C. Whenever a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

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(21) In the goods of *Abdool Aziz* (*Amir Ali and Sale, JJ.*), 23 Cal. 577; also see *Saldanha* v. *The Secretary of State*, 24 Mad. 241.

(22) In the goods of *Ram Chandra Das*, 9 B.L.R. 30.

(23) In the goods of *Ram Chandra Ghose*, 24 Cal. 567.

(24) In the goods of *Beake*, 13 B.L.R. app. 24, approved in 24 Cal. 567, *supra*.

(25) *Percival* v. *Reg.*, 33 L.J.Ex. 289.

(26) *Lord Advocate* v. *Hagart*, 2 H.L. 417.

Synopsis.

1. Legislative changes.
2. Scope of the section.
3. Application of the section.
4. Illustrative cases.
5. Properties situated in British India.
6. Power of appointment.

Comments.

634. LEGISLATIVE CHANGE.—The word "such" after 'whenever' was repealed by the repealing and Amending Act XIII of 1891.

635. SCOPE OF THE SECTION.—"This section provides for cases where a fresh grant of probate of a Will or Letters of Administration of the estate of the same person becomes necessary, and the fees have already been paid in respect to the whole or part of the property comprised in the estate of the deceased person."[27] Where the full fee chargeable under the Court-Fees Act on a probate at the time it is granted has been paid, no further fee shall be chargeable when a second grant is made in respect of that property as comprised in that estate.[28] This is in line with the English law, under which all second and subsequent grants of probate and administration, in respect of property on which the full duty has been already paid upon a previous grant, are exempted from further stamp duty by S. 3 of 41 Geo. III. C. 86; S. 36 of 5 and 6 Vict. C. 32, contains a corresponding provision for Ireland.[29] There is nothing in the wording of the section to confine its application to the case of some executors coming in to take probate after one of their number has already taken out probate. It will apply equally to a subsequent application for administration of the whole estate, and to an application to administer that which has been unadministered so far.[30] There are many cases in which a fresh grant becomes necessary, and it is to provide for such cases that S. 19-C of the Act was passed.[31]

636. APPLICATION OF THE SECTION.—The exemption from payment of double duty, intended by this section, applies where the first grant of probate was obtained in British India,[32] for the whole estate of the same testator, in respect of the same will, under the provisions of this Act; and, the second grant has become necessary, in respect of the property (whole or part) covered by the first probate. "The probate is sometimes revoked,

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(27) *Bhagwati Saran Singh* v. *Secretary of State*, 54 I.C. 703=5 P.L.J. 36=1 P.L.T. 469=1920 P.H.C.C. 81.

(28) *Swarna Moyi Debi* v. *The Secretary of State*, 30 I.C. 394=43 Cal. 625=22 C.L.J. 370=20 C.W.N. 472.

(29) *Ibid.* 43 Cal. 625, *supra*.

(30) In the matter of *Maung Win Pan*, 88 I.C. 759=3 Rang. 90=1925 Rang. 217=4 Bur. L.J. 97.

(31) 54 I.C. 703=5 P.L.J. 36=1 P.L.T. 469, *supra*.

(32) See in the goods of *Gladstone*, deceased, 1 Cal. 168. (*Held* that duty paid in England on a probate is no ground of exemption from probate duty in India in respect of interest in partnership property with British India); also see, *In the goods of March*, 4 Cal. 725 (liability of property on which duty paid in England to pay duty in India).

or again a portion of an estate may remain unadministered, and may require a fresh grant.''[33] Where the first grant is revoked, and a second grant of probate or letters of administration has been made, the fee already paid is to be refunded.[34] The annulment of the first grant to enable a fresh grant being applied for, is a ground of exemption under the section.[35] The section applies to an application to administer that which has been unadministered so far, equally to a subsequent application for administration of the whole estate.[36] Where an executor to whom probate has been granted dies, and another person is appointed to complete the administration, no fresh fee is leviable.[37] But, fresh Court-fee is payable on a fresh devolution on death of beneficiary. The word ''estate'' referred to in the section means the estate of a deceased person, and of the identical deceased. ''It is not the intention of the section that once the fee chargeable under the Act had been paid in respect of any particular property on the death of the owner for the time being, that property would be exempt ever afterwards from similar fees notwithstanding that it continued to pass from generation to generation by will or inheritance, and successive probates, or letters of administration were granted.''[38]

Again, S. 19-C. refers expressly to cases where both the first and second grants had been made after the Court-Fees Act had come into force. Mark the words ''*under this Act.*'' In the Calcutta cases of *In the goods of Chalmers*,[39] and *In the goods of Gasper*,[40] the second grant of probate was subsequent to the enactment of the Court-Fees Act, but the first grant had been taken out previously to that enactment. The second grant, in these cases was not held exempted from the payment of the *ad valorem* duty chargeable under the Act, although the full fee then chargeable by law had already been paid at the time when the first probate was taken out. But, where an executor to whom probate had been granted under the Court-Fees Act died, leaving a part of the testator's estate unadministered, and a new representative was appointed for the purpose of completing the administration, it was held that ''there was no new succession, no new devolution of the estate, and it was difficult why a fresh succession duty should be levied.'' Accordingly no further Court-fee was levied, although the value of the property had increased in the meantime.[41] When the appointment is made *de bonis non* there

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(33) *Bhagwati Saran Singh* v. *Secretary of State*, 54 I.C. 703=5 P.L.J. 36=1 P.L.T. 469=1920 P.H.C.C. 81.

(34) In the goods of *Peter Innes*, 16 W.R. 253.

(35) In the will of *Alfred Jones*, 1 S.L.R. 177.

(36) In the matter of *Maung Win Pan*, 88 I.C. 759=3 Rang. 90=1925 Rang. 217=4 Bur.L.J. 97.

(37) *Swarnamoye* v. *Secretary of State*, 30 I.C. 394=43 Cal. 625, *supra*.

(38) *Bhagwati Saran Singh* v. *Secretary of State*, 54 I.C. 703=5 P.L.J. 36=1 P.L.T. 469=1920 P.H.C.C. 81.

(39) 6 B.L.R. App. 137=21 W.R. 246, *note*.

(40) 3 Cal. 733=2 C.L.R. 436.

(41) In the goods of *Samuel Balthazar*, 4 L.B.R. 255.

is no new succession, no new devolution of the estate, which would justify a finding that fresh Court-fee must be paid.[42]

637. ILLUSTRATIVE CASES.—No duty is payable on a double probate which recites, and in fact proceeds upon the first.[43] No stamp duty is payable under the Court-Fees Act, on probate granted to a second executor, to whom leave was reserved to take out probate when the first probate was granted. *The first probate enures for the benefit of all the executors.*[44] When there are several executors appointed with distinct powers, as one for one part of the estate and another for another, yet there being but one will to be proved, one proving of it suffices.[45] Where an *ad valorem* stamp duty had been paid on a portion of the property of the testator under letters of administration which were valid until revoked, it was held that, in determining the stamp to be affixed to new letters of administration to be granted, credit should be given for the amount of duty which had been already paid, and such duty was not payable a second time.[46]

638. PROPERTIES SITUATED IN BRITISH INDIA.—The *Probate duty is payable on the assets within British India, at the date of the testator's death.*[47] Where S. died in England, and the probate of his will was obtained in England, and he left a large amount of property and credits in Bombay, and he was a partner in the firm which had its head office in London, and had branches in Bombay and Calcutta, it was held by the Bombay High Court that the Bombay business of the Firm was not a distinct business from the London business, but a foreign branch of an English Firm, and no probate duty was payable on the value of the share of deceased as a partner of the firm in the properties situate in British India at his death.[48] Probate duty is payable only on the assets in India; consequently, where English stock is not saleable or transferable until transferred on the register in the Bank of England to the executor or legatee, it is not an asset in India, as it is not liable to probate duty, though the scrip representing such stock is in the possession of a Bank in India.[49]

The PROBATE JURISDICTION OF COURTS in British India extends to wills executed out of British India by a person who is not a British subject; for example, to a will executed by a subject of a Native State in a Native State, provided the testator had at the time of his death moveable or immoveable property within

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(42) In the matter of *Maung Win Pan*, deceased, 3 Rang. 90 (92)= 1925 Rang. 217, *supra*.

(43) In the goods of *Bibee Ameerun*, 15 W.R. 496.

(44) *Ibid.* 15 W.R. 496.

(45) *William on Executors*, 10th Edn., Vol. I, p. 295, cited in 30 I.C. 394 (396).

(46) In the goods of *Lt.-Governor, Peter Innes*, deceased; (1871) 16 W.R. 253.

(47) In re *Ezakiel Joshua Abraham*, 21 Bom. 139.

(48) In the goods of *Sir Albert A. D. Sasoon*, 21 Bom. 673.

(49) In the goods of *Major General Millet*, deceased, 51 P.R. 1902.

the jurisdiction of the Court.[50] A grant of Probate may be made to take effect throughout British India or in a particular province; in the latter case the scale of fees will be according to the rate fixed for the Province.[1] Where the assets left by a testator are situate in more than one Province, the grant of probate in respect of all the assets, which are likely to come to the executor's hands, shall, under S. 59 of the Probate and Administration Act, have effect only over the property situate in the Province in which the probate is granted.[2]

639. **POWER OF APPOINTMENT.**—Where a person having a life interest in a fund, with a general and absolute power of appointment thereover, exercises such power by will, no fresh Court-fee is payable.[3] But, in the case of a will by husband conferring general power of appointment over a fund on his wife, where the husband's will was proved on his death, probate duty being paid on the principal amount of the fund, and the wife having made a will in which she exercised the power of appointment and died, and her executor subsequently applied for probate of her will, it was held that the power of appointment created by the will was "property" within the meaning of Art. 11 of the Court-Fees Act, and the estate of the testatrix was liable to probate duty in respect thereof.[4]

19-D. The probate of the will or letters of administration of the effects of any person deceased heretofore or hereafter granted shall be deemed valid and available by his executors or administrators for recovering, transferring or assigning any moveable or immoveable property whereof or whereto the deceased was possessed or entitled, either wholly or partially as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a court-fee was paid on such probate or letters of administration.

Probates declared valid as to trust-property though not covered by court-fee.

Synopsis.

1. **Scope.**
2. **Trust property.**
3. **Hindu joint family property.**
4. **Will creating a tenancy in common.**
5. **Private Provident Fund.**
6. **Power to confer a beneficial interest.**
7. **Dayabhaga rule of inheritance.**

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(50) *Bhaurao Dadajirao* v. *Lakshmi Bai*, 20 Bom. 607.

(1) See S. 273, Indian Succession Act; also see in the goods of *G. T. Williams*, 75 I.C. 466=27 C.W.N. 812=1924 Cal. 115=50 Cal. 597 (A Local Legislature may repeal or alter provisions of Court-Fees Act).

(2) *The Deputy Commissioner of Singhbhorn* v. *Jagadish Chandra*, 62 I.C. 513=1921 Pat. 206=6 P.L.J. 411=2 P.L.T. 683.

(3) In the goods of *Julia Oram*, 21 W.R. 245=12 B.L.R. App. 21; also see in the goods of *George*, 6 B.L.R. App. 138.

(4) In re *Lakshminarayana Ammal*, 25 Mad. 515.

640. **SCOPE**.—This section exempts probates as regards trust properties from Court-fee duty and it follows the English law, *viz.*, the provisions of 48 Geo. III C, 149, S. 35, in enacting that the probate or letter of administration is valid respecting property "whereof or whereto the deceased was possessed or entitled, either wholly or partially as a trustee", notwithstanding such "trust property" is not covered by Court-fee paid on such probate or letters of administration. The exemption has reference to the character of the property, as trust property, and not to the procedure of a previous grant of probate or letters of administration on which a Court-fee had been paid.[5]

641. **TRUST PROPERTY**.—Under the English Stamp Act, 1815, (55 George III. C. 184; S. 38), probate duty is not payable on trust property. "It is reasonable that probate duty should not be payable in respect of property which was vested in the deceased as a trustee and not beneficially, to which his executor or administrator can have no title as such, and to effect the transfer of which to new trustees is the sole purpose for which it is sought to obtain probate or letters of administration." But the Act as originally framed did not contain an express exemption to that effect in the Court-Fees Act; and, the terms of Cls. 11 and 12 of Sch. I of the Act were held to "include not only property to which the deceased was beneficially entitled during his lifetime, but also all property which stood in his name as trustee, or of which he was possessed *benami* for others."[6] But, this Chapter III-A, dealing with the Court-fee payable in respect of probates and letters of administration was inserted by the Probate and Administration Act, 1875, and based on the provisions contained in the English law, statutes 48 Geo. III, C. 149, S. 35 and 55, Geo. III, C., 184, Ss. 40 to 43 and 51. "*Property held in trust not beneficially or* with general power to confer a beneficial interest" has now to be shown in Annexure B, setting forth the items which the applicant "is by law allowed to deduct."[7] The expression "property held in trust not beneficially" within the meaning of Annexure B in the form set out in Sch. III of the Court-Fees Act is property held in trust by the testator, and not property as to which the testator has created a trust.[8] Where the deceased was a European subject of the German Empire, and he married a lady in Rhenish Prussia, where the Code Napolean is in force, according to which on a marriage settlement, a husband and wife have an equal interest in the property comprised in the community, it was held that on the death of one the property is divided into two parts, of which one part goes to the

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(5) *Collector of Kaira* v. *Chunilal*, 29 Bom. 161; *cf. Collector of Ahmedabad* v. *Sadchand Laduk Chand*, 27 Bom. 140 (*Held*, that S. 19-D only applies where Probate or Letters of Administration have already been granted on which Court-fee has been paid).

(6) In the goods of *Beresford*, and *Maddock*, deceased; (1871) 15 W. W. 456 (459).

(7) In re *Dasu Manavala Chetty*, 4 I.C. 1064=6 M.L.T. 286=19 M. L.J. 591=33 Mad. 93 (F.B.).

(8) *Deputy Commissioner of Singhbhum* v. *Jagadish Chandra*, 62 I.C. 513 (529)=1921 Pat. 206=6 P.L.J. 411=2 P.L.T. 683.

survior, and the other to the heirs or to donees under a testamentary disposition. Consequently on the death of the husband only one half of his poperty was chargeable with the *ad valorem* duty payable under Art. 11, Sch. I of the Court-Fees Act: the other half being trust property was exempt under S. 19-D.[9]

642. HINDU JOINT FAMILY PROPERTY.—There is a conflict of view on the question of exemption of the interest or undivided share of a deceased coparcener in the property of a Hindu joint family, under the Mitakshara law, which passes by survivorship on his death to his other coparceners. In a CALCUTTA case, where the deceased who was a member of a joint Hindu family governed by the Mitakshara law, left a will, of which he appointed his brothers the executors and trustees; and the brothers applied for a probate of his will, but claimed exemption from payment of probate duty on the ground that joint ancestral property passing by rule of survivorship was "trust property held not beneficially," the Tax-Officer took the view that the property in connection with which the probate was asked consisted of some plots of land purchased from the Corporation of Calcutta, by the deceased and his brothers, out of the income of the ancestral estate, and which had been conveyed to them as *tenants in common;* however, these plots of land could only have been acquired by the brothers on behalf of all the coparceners, and the conveyances could only operate as conveying it to them in trust for all the coparceners. This suggestion was accepted by Amir Ali and Sale, JJ., who held, upon the facts as stated, that the property though conveyed to four brothers as tenants in common, vested in them as trustees for the benefit of all the coparceners, and consequently was not liable to duty.[10] In the BOMBAY case of *Chunilal Harilal,* where the deceased Harilal died possessed of certain shares in joint stock companies and in the Bank of Bombay, and left three sons who applied for letters of administration, claiming exemption from stamp duty, it was held that S. 19-D of the Court-Fees Act applied, and property held in trust as above described was to be regarded as exempt from the *ad valorem* fee. The view of Calcutta High Court, which was "in accordance with the unbroken practice on the original side" of the Bombay High Court, was followed.[11] But, in the later case of *Kashinath Parashram* v. *Gourabai Mallappa,*[12] the earlier Bombay case was distinguished, and not followed. There the probate of a will purporting to dispose of property held jointly between the testator and his minor son as members of a joint Hindu family was not exempted from probate duty under S. 19-D of the Court-Fees Act. It was observed that in a joint Hindu family

(9) In the goods of *J. T. Froeschman,* 20 Cal. 575.

(10) In the goods of *Pokurmull Augwrwallah,* 23 Cal. 980=1 C.W.N. 31.

(11) *Collector of Kaira* v. *Chunilal,* 29 Bom. 161 (168)=6 Bom.L.R. 52; follows in the goods of *Foeschman,* 20 Cal. 575; and in the goods of *Pokurmal Augurwallah,* 23 Cal. 980=1 C.W.N. 31.

(12) 28 I.C. 473=39 Bom. 245.

where property passes by survivorship there is no legal foundation for a will, and no need of a probate. But, if the devisee under the will propounds the will, he cannot be heard to say that he should not pay the ordinary duty because a will was not necessary. Chunilal's case dealt with letters of administration, not the probate of a will; and, in the case of a will it was clear that "the parties claiming under the will cannot go behind its terms, or claim any exemption whatsoever upon allegations utterly inconsistent not only with the fact of the will itself, but with express statements made therein."[13] But, in *Keshavlal Punjalal* v. *The Collector of Ahmedabad*[14] this later ruling was dissented from, and the ruling in *Collector of Khaira* v. *Chunilal*[15] was followed, by the Full Bench of Bombay High Court. Sir Lallubbai Shah, A. C. J., held that the Letters of Administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death; and the question is whether the property was joint family property at the moment after his death, and not whether it was so at the date of the application. It was further observed that S. 19-D has been correctly interpreted by the Bombay High Court in *Collector of Khaira* v. *Chunilal*, and even if there be a doubt as to the true meaning of the expressions in S. 19-D, and in Annexure B, "the interpretation accepted in Calcutta so far back as 1896, and in Bombay so far back as 1904, and acquiesced in by the Legislature should now be accepted as representing the true scope of the said expressions."[16] Shah, Ag. C. J., pointed out that "while the holder, a member of the family, in one sense is beneficially interested in the whole, the other members of the coparcenary are also beneficially interested in the whole and the beneficial interest of the holder is limited by the extent of the interest of other members. Further, that interest disappears altogether on his death: and the survivors become the sole beneficiaries in the estate which stands in the name of the deceased person. On his death what is called his estate is no estate of his; and the legal title which still continues in the dead man is really the title of a man, whose beneficial interest in the property on his death is nothing." Consequently, "as regards property of this character it could be properly said that the deceased died possessed of it or was entitled to it either wholly or partially as a trustee within the meaning of S. 19-D."[17] Case law has been reviewed in this judgment, noting the weight of authority in support of a liberal construction of the section confining the operation of the duty, so as to "cover a case of joint family property held by a coparcener for the joint benefit of himself and others in which his beneficial interest ceases on his death, so that at the date of his death his legal title or posses-

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(13) 28 I.C. 473=39 Bom. 245.
(14) 77 I.C. 749=1924 Bom. 228=48 Bom. 75=25 Bom.L.R. 1240 (F.B.).
(15) 29 Bom. 161=6 Bom.L.R. 652.
(16) *Ibid.*
(17) *Ibid.*

sion is without any beneficial interest therein.''[18] In the Calcutta case of In the goods of *Bhubaneswar Trigunait*,[19] it was observed that ''there has been and there is likely to be a continuous increase in the number of cases in which shares, Government Securities, and Bank accounts belonging to Mitakshara joint families stand in the name of one member and, it is plain that further provision by the Legislature is imperatively required to solve the difficulties which arise in making title to such property upon the death of the holder.''[20]

THE OPPOSITE VIEW.—A Full Bench of the Madras High Court, has held in *In re Dasu Manavala Chetty*,[21] differing from the Calcutta view in In the goods of *Pokurnull Augurwallah*,[22] and the Bombay ruling in the case of *Collector of Kairu* v. *Chunilal*,[23] as also from the two precedents in the Madras Court, that where the son of a deceased Hindu undivided father applies for letters of administration to the estate of the deceased, it can be granted only on payment of the requisite stamp duty on the share of the deceased, as the property is not held ''in trust not beneficially or with general power to confer a beneficial interest'' referred to in Annexure B to Sch. III of the Court-Fees Act. The *ratio decidendi* of the ruling is that the deceased could not be said to have held his own share of the joint family property in trust, and not beneficially, though he may be said to have held his son's share in that way. The son must, therefore, pay *ad valorem* duty ''on the father's share in the property, or to be more exact, on the share which his father was entitled to claim at the moment before his death.''[24] The early Calcutta view, in the case of In the goods of *Brindabun Ghose*[25] was preferred, where two brothers were the only coparceners in a joint Hindu family, and on the death of one brother, the other brother applied for and obtained letters of administration in respect of deceased's half-share in the joint family on payment of *ad valorem* duty on such half-share, and Sir Richard Couch, C. J., held that the applicant's half-share ''should be treated as trust property and be exempt from the two per cent. *ad valorem* fee.''[26] This was supported by reference to the decision in the case of In the goods of *J. T. Fooschman*[27], where a European

(18) See 29 Bom. 161; 23 Cal. 980; *cf.* 39 Bom. 245=28 I.C. 473; *contra* 33 Mad. 93=4 I.C. 1064=19 M.L.J. 591.

(19) 95 I.C. 529=52 Cal. 871=29 C.W.N. 879=1925 Cal. 1201.

(20) *Ibid.* 95 I.C. 529 (532)=52 Cal. 871=1925 Cal. 1201, *supra*. See and *cf. Bank of Bombay* v. *Ambalal Sarabhai*, 24 Bom. 350, where it was held that Probate or Letters of Administration are necessary, for the registration and transfer of shares in a Bank, although surviving co-parceners take rights by rule of survivorship.

(21) 33 Mad. 93=4 I.C. 1064=6 M.L.T. 286=19 M.L.J. 591.

(22) 23 Cal. 980=1 C.W.N. 31.

(23) 29 Bom. 161.

(24) 33 Mad. 93=4 I.C. 1064 (1066), *supra*.

(25) 11 Bom. L.R. 39=19 W. R. 230 (see F.-n. 46, below).

(26) 19 W.R. 230=11 B.L.R. 39, followed in 33 Mad. 93=4 I.C. 1064 (1066).

(27) 20 Cal. 574.

deceased held property in common with his wife, under Code Napolean, with right of survivorship. The Madras view, that the applicant could obtain letters of administration only on paying the proper fee on the share of the deceased which he got by survivorship, has been followed in the case of *Mulukutla Annapurnamma* v. *Atchutarammayya*.[28] Where a Hindu father who had three sons executed a will by which he bequeathed his entire property in favour of his three sons, making his wife executor under the will, on an application by the wife as executor for probate, she was required to pay stamp duty only on ¼th of the property dealt with under the will, as the deceased was only entitled to ¼th of it, at the moment before his death.[29] The PATNA HIGH COURT,[30] has followed the Madras view, in the case of *Dasu Manavala Chetty*,[31] supported by the Bombay case of *Kashinath Parashram* v. *Gourabai Mallappa*.[32] But, this Bombay case, then "the latest case on the point" has since been overruled in *Keshavlal Punjalal's* case.[33]

643. WILL CREATING A TENANCY IN COMMON.— The Bombay High Court has held, in *Mangaldas Kilabhai Patel* v. *The Secretary of State*[34] that the decisions in *Collector of Khaira* v. *Chunilal*,[35] and *Keshavlal Punjalal* v. *Collector of Ahmedabad*,[36] are not applicable to the case of a will where the bequest in favour of two or more persons does not create a joint tenancy between the donees but creates only tenancy in common. It was observed that "an executor is always in a loose sense a trustee for creditors, but he is not a trustee within the meaning of S. 19-D, of the Court-Fees Act in the absence of any specific declaration of trust in his will. An executor cannot be turned into a trustee for the performance of duties which appertain to him as an executor.[37] Accordingly, where *A* made a will bequeathing his property to his wife *B*, and the sons of his nephew, *C* and *D*, who were minors, and *B* was to manage the property as executrix and on her death *C* and *D* were to take possession of the property, it was held that *C* and *D* applying for limited letters of administration could not claim exemption from Court-fee under S. 19-D, read with Sch. III, Annexure B, of the Court-Fees Act, as the will did not create a joint tenancy

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(28) 100 I.C. 111=38 M.L.T. 7=1927 Mad. 1101.

(29) *Ibid.*

(30) 58 I.C. 1007=5 P.L.J. 510=1 P.L.T. 710.

(31) 4 I.C. 1064=33 Mad. 93=6 M.L.T. 286=19 M.L.J. 591.

(32) 28 I.C. 473=39 Bom. 245=17 Bom.L.R. 169.

(33) See 77 I.C. 749=48 Bom. 75 (F.B.) (F.-n. 14 above).

(34) 108 I.C. 709=30 Bom.L.R. 54=1928 Bom. 55=52 Bom. 188.

(35) 29 Bom. 161 (F.-n. 11, *ante*).

(36) 48 Bom. 75=77 I.C. 749=1924 Bom. 228 (F.-n. 14, *ante*).

(37) 108 I.C. 709=1928 Bom. 55=52 Bom. 188, *supra*, citing *Jamnadas Gordhandas* v. *Damodar Das Chunilal*, 103 I.C. 225=29 Bom.L.R. 418 =1927 Bom. 424; and *Nanalal Lallubhoy* v. *Harlochand Jagusha*, 14 Bom. 476.

between *B*, *C* and *D*, and it did not constitute *B* a trustee for *C* and *D*.[38]

644. PRIVATE PROVIDENT FUND.—"A sum of money in a private provident fund cannot be deemed to vest in the nominee or the widow or the children of the depositor." "There is undoubtedly a fiduciary relationship between the depositor and the private company which has created the provident fund, but such a company cannot be deemed to be trustee for the dependant or the nominee of the depositor. Such a nominee or dependant can only take by succession to the estate of the deceased, and such a deposit is, therefore, not exempt from paying the Court-fee when application is made for letters of administration to the estate of the deceased subscriber or depositor."[39] The NAGPUR COURT has taken a different view. Where a sum stood to the credit of a deceased person in the Eastern Bengal Railway Provident Fund, the Board of Revenue held that the Provident money is exempt from duty, and that this Administration has nothing whatever to do with the fund which passes to the nominee even if there is no Administrator. The Judicial Commissioner's Court agreed with this view and it was held that the amount will, therefore, be mentioned among the assets, but no Court-fee will be payable in respect of it.[40]

645. POWER TO CONFER A BENEFICIAL INTEREST.—Property which is the subject of a general power of appointment is not the appointer's property so as to be liable to probate duty under the Court-Fees Act. This view held by Couch, C. J., in some early Calcutta cases,[41] is now inserted by the Amending Court-Fees Act XI of 1889 as part of Sch. III, where such property should be shown in Annexure B to the Act for the purpose of exemption from probate duty. In the case of In re *Lakshminarayana Ammal*[42] the Madras High Court held that the testatrix's power of appointment to the fund is "property" within the meaning of item 11, of the schedule, and of the statutory form of affidavit as to valuation. On this short ground, the view of Couch, C. J., in In the goods of *George* was not agreed with, as the latter decision was based on the English law, (36 Geo. III, C. 52, S. 18). But, the learned Judge's attention was not drawn to the exemption given in Annexure B, to "property held with general power to confer a beneficial interest," which evidently follows the English law in the matter.[43] In this connection it may be noticed that property appointed by will under a general power of appointment, is to be distinguished from

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(38) 108 I.C. 709=1928 Bom. 55=52 Bom. 188, *supra*.

(39) In the matter of *H. Hamilton King*, deceased, 1928 Rang. 312=6 Rang. 558.

(40) *Agnus Mary De'Santos* v. *James William De'Santos*, 1925 Nag. 108 (1)=82 I.C. 128.

(41) In the goods of *George*, (1870) 6 Bom.L.R. (App.) 138; and In the goods of *Dram*, (1874) 21 W.R. 245.

(42) 25 Mad. 515.

(43) Probate Procedure in British India, by *Cornish*, p. 226.

property appointed by will under a limited power of appointment. The former becomes the assets of the appointer for the payment of his debts;[44] but, the latter is not regarded as the property of the appointer.[45]

646. DAYABHAGA RULES OF INHERITANCE.—In a case relating to a family governed by Dayabhaga law of inheritance, where one of two brothers died unmarried leaving the other brother as heir who applied for letters of administration of the property and credits of the deceased, consisting of (1) moneys in Government Bank, (2) Government Securities standing in the name of the deceased, (3) family dwelling-house, it was held that the Court-fees were payable on the share of the deceased brother, but the surviving brothers share was to be treated as trust property in his hands, and therefore, was exempt from duty.[46] Similarly, no duty was held payable where a Hindu daughter died possessed of her father's property, and also some Government Promissory Notes standing in his own name.[47]

Provision for case where too low a court-fee has been paid on probates, etc.

19-E. Where any person on applying for probate or letters of administration has estimated the estate of the deceased to be of less value than the same has afterwards proved to be, and has in consequence paid too low a court-fee thereon, the Chief Controlling Revenue Authority [for the local area] in which the probate or letters has or have been granted may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full court-fee which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from the date of grant, or five times, or, if it or they is or are produced after one year from such date, of twenty times, such proper court-fee, without any deduction of the court-fee originally paid on such probate or letters:

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a court-fee was at first paid on the probate or letters, and if

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(44) *Beyfus* v. *Lawley*, 1903 A.C. 411.

(45) *Commissioner of Stamp Duties* v. *Stephen*, 1905 A.C. 137.

(46) In the goods of *Brindabun Ghose*, 19 W.R. 239=11 B.L.R. App. 39; (followed in 33 Mad. 93=4 I.C. 1064 F.B.).

(47) In the goods of *Joymoney Dassi*, 14 B.L.R. 184.

the said authority is satisfied that such fee was paid in consequence of a mistake or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper court-fee, the said authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

Synopsis.

1. Amendment.
2. Scope.
3. Power of Civil Court.
4. Power of Chief Controlling Revenue Authority.
5. Mistake.

647. AMENDMENT.—The words "for the local area," were substituted for the words "of the Province," by the Repealing and Amending Act (Act X of 1901), S. 3 (1).

648. SCOPE.—As pointed out in the case of *Manekji* v. *Secretary of State*[48] this section contemplates an application on the part of the person who has taken out probate and produces the same to be duly stamped.[49] The section further contemplates that the estimated value of the estate is less than what the value has afterwards proved to be.[50] If it is intended to take proceedings under S. 19-E, where the petitioner disputes the correctness of the assessment by the Collector, the Court should be moved for an enquiry into the true value of the assets under S. 19-H, and if the Collector adopts such a course it is incumbent upon him to make out a case for enquiry upon definite facts.[1] In a case where the section is properly applicable, the Chief Controlling Revenue Authority is at liberty to refuse to stamp the probate till the penalty has been paid and no occasion can consequently arise for recovery, by summary process or by suit, of the penalty imposed under. S. 19-E.[2] But, where the statutory requirements are not complied with, the imposition of penalty under this section is *ultra vires*.[3]

649. POWER OF CIVIL COURT.—A suit for the recovery of penalty, which has been rightly imposed by the Revenue Authority, is maintainable in a Civil Court. There is no provision in law for the recovery of the penalty by summary process, and a suit for its recovery is not barred explicitly or impliedly.[4]

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(48) *Manekji* v. *Secretary of State*, 1896 B.P.J. 751.

(49) *Nikunja Rani Chowdhrani* v. *Secretary of State*, 31 I.C. 460 (462)=43 Cal. 230=22 C.L.J. 375=20 C.W.N. 504.

(50) 31 I.C. 460 (462)=43 Cal. 230, *supra*.

(1) In the goods of *Stevenson*, 6 C.W.N. 898, cited in 31 I.C. 460 (462)=43 Cal. 230, *supra*.

(2) *Ibid*. 31 I.C. 460.

(3) *Ibid*.

(4) 31 I.C. 460 (461)=43 Cal. 230, *supra*.

A Civil Court has, no jurisdiction to review the decision of a Revenue Authority on the ground that the valuation had been incorrectly made or that the discretion in the imposition of the penalty had been erroneously exercised.[5] "But, the position is different when the order for imposition of penalty is assailed on the ground that it has not been made in accordance with the statute."[6] "If the action of the Revenue Authority is *ultra vires*, if he has not followed the procedure prescribed by the statute which is the source of his authority, there is no enforceable claim which a Civil Court is bound to recognise."[7] Where the plaintiffs, the four executors, brought a suit for declaration to the effect that the order of the Financial Commissioner was *ultra vires*, that the plaintiffs had paid a full Court-fee stamp as required by law, and prayed for an injunction restraining the defendant, the Secretary of State, from enforcing the order of the Financial Commissioner, it was held that the Civil Court had jurisdiction on a plea being taken to that effect and the claim was decreed where the order in question was found *ultra vires* and without authority.[8]

650. POWER OF THE CHIEF CONTROLLING REVENUE AUTHORITY.—See S. 20 of the Probate and Administration Act as to the powers of the Chief Controlling Revenue Authority to remit the whole or part of any penalty or forfeiture imposed under S. 19-E of the Court-Fees Act.

651. "MISTAKE."—The question whether a certain property, was or was not trust property would come under S. 19 (2) as the word "mistake", does not include mistake of law.[9]

Administrator to give proper security before letters stamped under section 19-E.

19-F. In case of letters of administration on which too low a court-fee has been paid at first, the said authority shall not cause the same to be duly stamped in manner aforesaid until the administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased had been ascertained.

Synopsis.

1. Administration Bond.

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(5) 31 I.C. 460 (461).

(6) 31 I.C. 460 (462).

(7) 31 I.C. 460 (462); also see *Feroze A. Cooper* v. *Secretary of State*, 1928 Lah. 947.

(8) *Feroze A. Cooper* v. *Secretary of State*, 1928 Lah. 947=111 I.C. 692.

(9) *Ibid.* 1928 Lah. 947=111 I.C. 692.

652. **ADMINISTRATION BOND**.—Section 291 of the Indian Succession Act provides for an administration bond being given to the District Judge with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge may, by general or special order direct.[10]

This section is based on 55 Geo. III, C. 184, S. 42, and it requires a bond to be given in every case: and the bond in the case of a limited or special administration may provide that the administrator "will exhibit a true and perfect inventory of the said estate and effects *limited as aforesaid* and render a just and true account thereof whenever required by law to do so."[11]

19-G. Where too low a court-fee has been paid on any probate or letters of administration in consequence of any mistake or of its not being known at the time that some particular part of the estate belonged to be deceased, if any executor of administrator acting under such probate or letters does not within six months [* * * *] after the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, apply to the said authority and pay what is wanting to make up the court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees and also a further sum at the rate of ten rupees per cent. on the amount of the sum wanting to make up the proper court-fee.

Executors, etc., not paying full court-fee on probates, etc., within six months after discovery of underpayment.

Synopsis.

1. Amendment.
2. Penalty in protection of revenue.

653. **AMENDMENT**.—The words "after the first day of April, 1875 or," are repealed by the Repealing and Amending Act (X of 1901), Sch. I.

654. **PENALTY IN PROTECTION OF REVENUE**.—Section 19-G, is based on S. 43 of 55, Geo. III, C, 184, and S. 122 of 56 Geo. III, C. 56. For the protection of revenue, however, this section provides a penalty. This section has no application where the contest is whether certain property which has been

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(10) *Monmohini Dassi* v. *Taramoni*, 1929 Cal. 733 (The District Judge has a discretion to ask for security from an executor: and ordinarily it is not the function of the Judge to distrust an executor, and ask for security from a person whom the testator trusted); also see and *cf. Juggadishari Debi*, in re, 7 Cal. 84; and *Mahamayd Debi* v. *Gangamoyi Debi*, 1 C.L.J. 180.

(11) In the goods of *A. S. Gubboy*, 26 Cal. 408 (409).

put in Annexture B on the ground that it is trust property is or is not trust property.[12]

The decision in *Manekji* v. *Secretary of State*[13] shows that a Civil Court has no jurisdiction to review the decision of a Revenue authority on the ground that the valuation had been incorrectly made or that the discretion in the imposition of penalty had been erroneously exercised. The Court can, however, determine whether the imposition of penalty in the case was *ultra vires*.[14]

Notice of applications for probates or letters for administration to be given to Revenue authorities, and procedure thereon.

19-H. (1) Where an application for probate or letters of administration is made to any Court other than a High Court, the Court shall cause notice of the application to be given to the Collector.

(2) Where such an application as aforesaid is made to a High Court, the High Court shall cause notice of the application to be given to the Chief Controlling Revenue Authority [for the local area in which the High Court is situated].

(3) The Collector within the local limits of whose revenue-jurisdiction the property of the deceased or any part thereof is, may at any time inspect or cause to be inspected, and take or cause to be taken copies of, the record of any case in which application for probate or letters of administration has been made, and if, on such inspection or otherwise, he is of opinion that the petitioner has under-estimated the value of the property of the deceased, the Collector may, if he thinks fit, require the attendance of the petitioner (either in person or by agent) and take evidence and inquire into the matter in such manner as he may think fit, and, if he is still of opinion that the value of the property has been under-estimated, may require the petitioner to amend the valuation.

(4) If the petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court before which the application for probate or letters of administration was

(12) *Feroze A. Cooper* v. *Secretary of State*, 111 I.C. 692=1928 Lah. 947.

(13) 1896 Bom.P.J. 751; cited in *Nikunja Rani* v. *Secretary of State*, 31 I.C. 460 (461).

(14) *Ibid.* 31 I.C. 460 (462).

made, to hold an inquiry into the true value of the property:

Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventary required by section 277 of the Indian Succession Act, 1865, or, as the case may be, by section 98 of the Probate and Administration Act, 1881.

(5) The Court, when so moved as aforesaid, shall hold, or cause to be held, an inquiry accordingly, and shall record a finding as to the true value, as near as may be, at which the property of the deceased should have been estimated. The Collector shall be deemed to be a party to the inquiry.

(6) For the purposes of any such inquiry, the Court or person authorized by the Court to hold the inquiry may examine the petitioner for probate or letters of administration on oath (whether in person or by commission), and may take such further evidence as may be produced to prove the true value of the property. The person authorized as aforesaid to hold the inquiry shall return to the Court the evidence taken by him and report the result of the inquiry, and such report and the evidence so taken shall be evidence in the proceeding, and the Court may record a finding in accordance with the report, unless it is satisfied that it is erroneous.

(7) The finding of the Court recorded under sub-section (5) shall be final, but shall not bar the entertainment and disposal by the Chief Controlling Revenue Authority of any application under section 19-E.

(8) The Local Government may make rules for the guidance of Collectors in the exercise of the powers conferred by sub-section (3).

Synopsis.

1. Amendments.
2. Scope.
3. Proviso to sub-Section (4).
4. Notice of application.
5. Procedure in motion for inquiry.
6. Valuation by District Judge.
   (a) Duty of Court.
   (b) Checking of valuation.
   (c) Costs of proceeding.
   (d) Finality of finding.
7. Review of finding.
8. Property outside province.
9. Instructions on the working of S. 19-H.

655. AMENDMENTS.—The words "for the local area in which the High Court is situated" were substituted for the words

"of the province," by the Court-Fees Amendment Act (X of 1901), S. 3 (2).

This section, along with Ss. 19-I, 19-J and 19-K, were inserted by the Court-Fees Amendment Act, 1899 (Act XI of 1899), S. 2.

Section 277 of the Indian Succession Act, 1865, and S. 98 of the Probate and Administration Act, 1881, correspond to S. 317 of Act XXXIX of 1925.

656. **SCOPE**.—This section provides (1) for a notice by the Probate Court to the Collector of the application for probate or letters of administration, (2) or a notice by the High Court to the Chief controlling Revenue authority; and (3) an inquiry by Collector as to the true valuation of the estate of the deceased, and a requisition for amendment of the application to correct the valuation, when necessary; (4) procedure where the required amendment is refused by the applicant, for the Collector to apply to the District Judge for inquiry of true valuation within six months from the Exhibition of inventory (under S. 317 of Act, XXXIX of 1925); (5) an inquiry by Court to which the Collector is a party; (6) the proceedings in the inquiry by way of evidence and report; and (7) the finding as to valuation by the Court, which shall be final.

657. **PROVISO TO SUB-SECTION (4)**.—It has been held by their Lordships of the Privy Council, in *Raj Kumari Bhubaneshwari Kumar* v. *The Collector of Gaya*,[15] that it is "not a justifiable construction of this proviso to date the period of running from anything less than the lodging of the inventory required by the statute. It will not satisfy this proviso that six months have elapsed from a period when a certain document, which might be classed as or denominated an inventory, satisfies a District Judge or any Judge. What he has to be satisfied of is that the *punctum temporis* from which the six months run is the lodging of an inventory as required by S. 98." No inventory satisfies this statutory requirement which omits the essential of this detail, namely, that its contents shall include "a full and true estimate of all the property in possession." The period of six months prescribed in the proviso to S. 19-H, sub-S. (4) must be taken to run from the time of the presentation of the revised inventory.[16]

658. **NOTICE OF APPLICATION**.—"By S. 19-H notice of every application for probate or letters of administration has to be given to Chief Controlling Revenue Authority and means are provided whereby the Revenue Authorities may check valuations and recover the proper fees."[17]

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(15) 21 I.C. 975=41 Cal. 556=40 I.C. 236=18 C.W.N. 153=19 C.L.J. 136=12 A.L.J. 69=26 M.L.J. 56=15 M.L.T. 87=1914 M.W.N. 13 =16 Bom.L.R. 95 (P.C.).

(16) *Deputy Commissioner, Lucknow* v. *Mrs. Aichman*, 1934 Oudh 72.

(17) In the goods of *Bhubaneswar Trigunait*, 95 I.C. 529=29 C.W.N. 879=52 Cal. 871=1925 Cal. 1201; also see in the goods of *Oomda Bibee*, 26 Cal. 507 (The object of notice is not to delay the proceedings).

659. PROCEDURE IN MOTION FOR INQUIRY.—The Collector is required simply to make an application for enquiry; he should place before the Court materials showing that an enquiry was needed, *i.e.*, he should make out a case for enquiry upon definite facts.[18]

The grant of probate to a petitioner who has filed the valuation required by S. 19-I of the Court-Fees Act, and has also paid the fee requisite under that section, cannot be delayed, because the Collector has not made a motion under S. 19-H, sub-s. 4.[19]

660. VALUATION BY DISTRICT JUDGE—(a) Duty of Court.—Where the applicant alleges that certain properties have been erroneously included in the schedule, and that they are trust properties, and not part of the estate of the deceased, and should, therefore, be excluded from the valuation, it is the duty of the District Judge to go into the matter, and his failure to do so amounts to a refusal to exercise a jurisdiction vested in him by law, and renders his order open to revision under S. 115 of the Civil Procedure Code.[20] The expression "valuation of property" in S. 19, means valuation of the property of the deceased. Where the number of shares held jointly by Mr. and Mrs. A, became the entire property of Mrs. A, by survivorship, on the death of her husband, no duty was payable in respect of her late husband's share in them.[21]

(b) Checking of Valuation.—The duty of checking the correctness of the valuation put upon the various items of property set out in the affidavit of valuation according to the form prescribed in the third schedule of the Court-Fees Act, is entirely a matter for the Revenue Authorities on receipt from the High Court of notice of application for grants of probate or Letters of Administration as the case may be.[22] If that valuation is not correct it is not the business of the High Court but of the Revenue Authorities to make such investigation as they think fit, and if they are so advised to move the Court under sub-s. 4 of S. 19-H of the Court-Fees Act, 1870. The Civil Courts or the Registrar of the High Court, ought not to concern themselves with the checking of the valuation, but should merely satisfy himself that all the proper duty has been paid in accordance with and upon the basis of the figures which the executors themselves put forward in their affidavit of valuation.[23]

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(18) In the goods of *J. R. Stevenson*, 6 C.W.N. 898, cited in *Nikunja Rani* v. *Secretary of State*, 31 I.C. 460=22 C.L.J. 375=20 C.W.N. 504.

(19) In re *Srimote Prasanna Moyee Basu*, in the matter of *Will of Kritanta Kumar Bose*, 40 I.C. 576 (577); also see in the goods of *Oomda Bibee*, 26 Cal. 407. ("The object is not to delay the grant, which may be made as soon as the Court is satisfied that the *ad valorem* fee payable on the valuation of assets furnished in the prescribed form has been paid".)

(20) *Chinmatha Nath* v. *Secretary of State*, 78 I.C. 901=1925 Cal. 357.

(21) *Deputy Commissioner* v. *Mrs. Aikman*, 1934 Oudh 72.

(22) In the goods of *Aratoon Stephen*, 32 C.W.N. 799.

(23) *Ibid.* 32 C.W.N. 799.

(c) Costs of proceeding.—The Collector is no party to probate proceeding, and there is no provision in the statute to enable him to realize any costs which may be incurred in connection with an inquiry under S. 19-H. The Act does not contemplate the awarding of costs in such a proceeding: only the excess fee is to be realised as an arrear of land-revenue.[24]

(d) Finality of Finding.—Where an applicant for probate refuses to amend the valuation of the estate to the satisfaction of the Collector, and the latter applies to the District Judge asking that an enquiry may be made into the true value of the property, the finding of the District Judge as to the value of the property under sub-s (5) of S. 19-H, of the Act is final, and no appeal lies against it by virtue of the provision contained in sub-s. 7 of the section.[25]

661. REVIEW OF FINDING.—A review may be granted in a proceeding under S. 19-H of the Court-Fees Act, on any ground which may be a sufficient ground within the meaning of O. 47, R. 1, Civil Procedure Code; remembering that the Privy Council in the case of *Chajju Ram* v. *Neki*, have laid it down that those words are to be construed in the light of the previous words and on the principle of *ejusdem generis*. The effect of this ruling is that under the words "other sufficient reason," the reason must be one having sufficiency of a kind analogous to the two specified cases, that is to say, analogous to excusable failure to bring to the notice of Court new and important matter or analogous to error on the face of the record. This would not cover the case where the party had not been ready on the date fixed for hearing with his evidence, without any real excuse.[26]

662. PROPERTY OUTSIDE PROVINCE.—The sum charged, under the provisions of Court-Fees Act, upon a grant of probate or of letters of administration is not a tax or duty levied upon the property upon which the probate or administration operates, and it is not charged thereon as is estates duty in England, but it is merely a fee levied by the Court issuing the probate or letters of administration for the work done in this connection. Accordingly, if a person chooses to take out probate or administration in a particular Province he must submit to the scale of fees in that province; the imposition being viewed as a Court-fee and not as a duty or tax, it is quite immaterial where the property is situate.[27]

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(24) *Hridoy Mohini Das* v. *Secretary of State*, 72 I.C. 472=50 Cal. 239 =1923 Cal. 406; also see in the goods of *J. R. A. Stevenson*, 6 C.W.N. 898. (The Act does not specify in what way or by whom the expenses of inquiry should be met).

(25) *Chinmatha Nath* v. *Secretary of State*, 78 I.C. 901=1925 Cal. 357.

(26) *Brindubashini Roy Chowdhury* v. *Secretary of State*, 79 I.C. 745= 51 Cal. 70=40 C.L.J. 163.

(27) In the goods of *G. T. Williams*, 75 I.C. 466=50 Cal. 597=27 C. W.N. 812=1924 Cal. 115; also see and *cf.* in re *Hayes*, (1888) 12 Mad. 49. (The Civil and Military Station of Bangalore, is foreign territory and part of the State of Mysore). *Held*, that the Madras High Court exercises no

663. INSTRUCTIONS ON THE WORKING OF S. 19-H.—The Board's circular Order No. 3 of March, 1902, in continuation of Circular Order No. 11 of September, 1900 lays down certain instructions on the working of S. 19-H of the Act, for the guidance of Revenue Officers. The stamp manual for Calcutta, embodies the instructions on the working of this section in Letter No. 980, S.R., dated, Calcutta, the 10th February, 1902, and various Stamp Manuals for other Provinces may be consulted in this connection as regards instructions in the working of this section in the particular Provinces.

19-I. (1) No order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the third schedule, and the Court is satisfied that the fee mentioned in No. 11 of the first schedule has been paid on such valuation.

Payment of court-fees in respect of probates and letters of administration.

(2) The grant of probate or letters of administration shall not be delayed by reason of any motion made by the Collector under section 19-H, sub-section (4).

Synopsis.

1. **Scope.**
2. **Pre-payment of Court-fee.**
3. **Administration of part of property.**
4. **Motion of Collector not to delay grant.**
5. **Provident Funds.**
6. **Testamentary jurisdiction.**

Comments.

664. SCOPE.—The form of application for grant of probate, etc., consists of an affidavit with two annextures, in one of which, Annexure A, is to be specified the property and credits of the deceased, and in Annexure B, is to be set forth the items which the applicant "is by law allowed to deduct."[28] It is for the High Court, under S. 19-I, to decide before granting the probate as to whether the property was or was not rightly included in Schedule B.[29] That is to say, whether a certain property was or was not trust property, would be a question coming before grant of probate under S. 19-I of the Act.[30] This section pro-

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jurisdiction over the assets of a deceased person within the limits of civil and military station, Bangalore); also see Madras Board's Proceedings No. 1100 R. Mis., dated 17-9-1914.

(28) In re *Dasu Manavala Chetty*, 4 I.C. 1064=33 Mad. 93=6 M.L.T. 286=19 M.L.J. 591 (F.B.); also see *Kuppammal* v. *Ammani Ammal*, 22 Mad. 345.

(29) *Ibid.* 33 Mad. 93 (F.B.); cited in *Feroze A. Cooper* v. *Secretary of State for India*, 111 I.C. 692=1928 Lah. 947.

(30) *Ibid.* 1928 Lah. 947=111 I.C. 692; cites 33 Mad. 93 (F.B.) (where this was assumed).

hibits an order by Court, until the Form of Valuation is duly filed, and the proper Court-fee has been paid on such application.[31] The provisions of this section are imperative, and the Court has no power to relax them. Therefore, where a grant is sought, the applicant must comply with its statutory requirements.[32]

665. PREPAYMENT OF COURT-FEE.—It was held by Sale, J., in the case of In the goods of *Omda Bibee*[33], that in an application for probate or letters of administration the fee is required to be paid to the satisfaction of the Court. Such payment should be made to the Registrar and certified by him to the Court. This certificate or a certificate from the Taxing Officer, where exemption is claimed and allowed, should be produced to the Court with the application and the affidavit of valuation. This ruling is regarded as authority for the proposition that S. 19-I, of the Court-Fees Act contemplates the pre-payment of duty before an order for grant of probate is made.[34] Similarly, it has been observed by the Calcutta High Court, that, "it is plain that as the fee chargeable upon a probate is required by S. 19-I to be paid before the order for grant of probate is made, what constitutes "the full fee chargeable under this Act," within the meaning of S. 19-C, must be determined by reference to the point of time when the grant of probate is made."[35] Mr. Kinney, in his comments on the Probate and Administration Act says: "Under the Court-Fees Act in India duty is payable on such a grant (that is, a grant of letters to an administrator *pendente lite*), and this duty is to be paid on the value of the assets before the grant issues,"[36] and in his work on the "The Law relating to estate duty in India, he says, "if an administrator *pendente lite*, is appointed in any testamentary proceedings the duty must be paid before the issue of such grant, and upon termination of such proceedings the person in whose favour the full grant is ordered to issue is entitled to such grant free of payment."[37]

Section 19-I of the Court-Fees Act, read with Third Schedule requires that the valuation of property in the form set forth in First Schedule should be made, and the Court-fees paid on the basis thereof before an order entitling the petitioner to the grant of probate or letters of administration is made upon the appli-

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(31) *Maung Ye Gyan* v. *Ma Hue*, 1 L.B.R. 228.

(32) In the goods of *Bhubeneswara Trigonait*, 94 I.C. 986=29 C.W.N. 372=1925 Cal. 627 (Court-fee charged in case of Hindu Co-parcenary property).

(33) 26 Cal. 407=3 C.W.N. 392.

(34) *Nikunja Rani* v. *Secretary of State*, 31 I.C. 460=43 Cal. 230=22 C.L.J. 375=20 C.W.N. 504; citing 26 Cal. 407, *supra*.

(35) *Swarnamoyi Debi* v. *Secretary of State*, 30 I.C. 394 (395)=43 Cal. 625.

(36) *Kinney's Probate and Administration Act*, second edn., p. 71; cited in *Maung Htin Gyaw* v. *Maung Po Sein Gyi*, 95 I.C. 541=1926 Rang. 89 =5 Bur.L.J. 9.

(37) *Kinney's Estate Duty in India*, 1918, p. 70, cited in 95 I.C. 540 (542)=1926 Rang. 89=5 Bur.L.J. 9.

cation.[38] "It is obvious that till the petitioner has complied with the requirements of the statute in this behalf, the Court cannot *pronounce* in favour of the validity of the claim for probate or letters of administration,"[39] Consequently, where the petitioner satisfies the requirements of the statute on a certain date, he becomes entitled to an order for grant of probate, etc., if he can establish the genuineness of the testamentary instrument propounded by him.[40] Where, therefore, an application for probate was made and Court-fees paid thereon before the coming into force of the Bengal Court-fees Amendment Act of 1922, but the order granting probate was made after the said enforcement, no further Court-fee was held leviable under the provisions of the Amending Act.[41]

It has been pointed out by the Oudh Judicial Commissioner's Court, in the case of *Deputy Commissioner, Lucknow* v. *The Estate of Kali Charan, deceased*,[42] that S. 19-I of the Court-Fees Act is no bar to the *hearing* of an application for the grant of probate or letters of administration if proper Court-fee has not been paid. If the petitioner undertakes to pay such Court-fee as may be found due if his application is accepted, the Court will hear the application. Similarly it has been held by the Calcutta High Court, that an executor cannot be compelled to pay probate duty until the Collector has finished his work with regard to the valuation of property.[43] In this case, the High Court set aside the order striking off the application, and directed that probate be issued to the appellant executrix on her paying the requisite duty within a reasonable time after the report of the valuation was made by the Collector, subject to her executing an administration Bond with a surety for required amount.[44]

666. ADMINISTRATION FOR PART OF THE PROPERTY.—An application for the grant of letters of administration, with the will annexed, in respect of a portion of the property covered by the will need not contain an inventory of the entire property. The words "the amount of assets which are likely to come into the petitioner's hands" occurring in S. 64, Probate Act, indicate in a way that the Legislature did contemplate that a case may occur in which it may be necessary to make an application for the grant of administration for part of the property only.[45]

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(38) *Thaddeus Nahapiet* v. *Secretary of State*, 81 I.C. 751 (752)=39 C.L.J. 209=1924 Cal. 987.

(39) *Ibid.* 81 I.C. 751 (752).

(40) *Ibid.*

(41) 81 I.C. 751 (752)=1924 Cal. 987; compare 106 I.C. 66=1927 Bom. 643=29 Bom.L.R. 511. (The fee to be paid before the grant of probate is to be calculated according to the Act in force on the date of grant of probate and not on the date of application for probate.)

(42) 8 I.C. 695=14 O.C. 14.

(43) *Monmohini Dassi* v. *Taramoni*, 1929 Cal. 733.

(44) *Ibid.* 1929 Cal. 733.

(45) *Gurbachan Kaur* v. *Satwant Kawr*, 90 I.C. 620=7 L.L.J. 288=1925 Lah. 493.

667. MOTION OF COLLECTOR NOT TO DELAY GRANT.—It is clear that the petitioner is entitled to a grant of probate as soon as he has paid the fee requisite under the section on his filing the valuation as required by S. 19-I of the Court-Fees Act. The grant is not to be delayed even in a case where the Collector has made a motion under S. 19-H, and, on the same principle, the grant cannot be delayed where the Collector has not made a motion.[46] There is a provision for realization of deficit Probate duty by the Collector, and the Government Revenue cannot suffer in the least if probate certificate is granted.[47]

668. PROVIDENT FUNDS.—Provident fund money is exempt from probate or administration duty, as it passes to a nominee, and even in the absence of an Administrator, it does not form an asset of the deceased. Such amounts may, therefore, be mentioned among the list of assets in respect of which probate, etc., is granted, *pro majore coutela*, but no Court-fee will be payable in respect of it.[48]

669. TESTAMENTARY JURISDICTION.—Section 19-I which applies to all Courts invested with testamentary jurisdiction, must be applied with reference to S. 5. In the High Court questions as to the necessity of paying Probate duty or as to the amount thereof cannot arise independently of S. 5.[49]

Recovery of penalties, etc.

19-J. (1) Any excess fee found to be payable on an inquiry held under section 19-H, sub-section (6), and any penalty or forfeiture under section 19-G, may, on the certificate of the Chief Controlling Revenue Authority, be recovered from the executor or administrator as if it were an arrear of land-revenue by any Collector in any part of British India.

(2) The Chief Controlling Revenue authority may remit the whole or any part of any such penalty or forfeiture as aforesaid, or any part of any penalty under section 19-E or of any court-fee under section 19-E in excess of the full court-fee which ought to have been paid.

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(46) *Prasanna Moyee Boon*, in re, 40 I.C. 576.

(47) *Ibid.*

(48) *Mrs. Agnes* v. *James William*, 82 I.C. 128 (Nag.)=1925 Nag. 108 (1); also see In the the goods of *Molley*, O.P. No. 110 of 1922, Madras High Court. (*Held*, that moneys nominated in favour of a person, who was not dependant under the rules of the fund are the assets of the deceased subscriber and vest as such in the Administrator-General who had obtained a grant of Letters of Administration with the nomination form annexed.) Noted in *Satyamurthie's* Court-Fees Act, p. 325.

(49) In the goods of *Bhubaneswar Trigunait*, 95 I.C. 529=52 Cal. 871 =29 C.W.N. 879=1925 Cal. 1201.

Comments.

670. SCOPE.—The excess fee found due under S. 19-H, or a forfeiture, or penalty, under S. 19, may be recovered as an arrear of land revenue. This section which prescribes the mode of recovery of penalties, makes no mention of S. 19-E, because in a case where that section is properly applicable, the petitioner is entirely in the hands of the Chief Controlling Revenue Authority, who is at liberty to refuse to stamp the probate till the penalty has been paid.[50]

Sections 6 and 28 not to apply to probate or letters of administration.

19-K. Nothing in section 6 or section 28 shall apply to probates or letters of administration.

Comments.

671. SCOPE.—The effect of this provision is that a probate, or letters of administration, can be acted upon even though insufficiently stamped. This is in view of the provisions in the Act under which a deficiency in Court-fee can be recovered. *Vide* Ss. 19-E, 19-G or 19-H, of the Act.

(50) *Nikunja Rani* v. *Secretary of State*, 31 I.C. 460 (462)=22 C. L.J. 375=20 C.W.N. 504=43 Cal. 230.

CHAPTER IV.

PROCESS-FEES.

Rules as to costs of processes.

20. The High Court shall, as soon as may be, make rules as to the following matters:—

(i) The fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil and Revenue Courts established within the local limits of such jurisdiction;

(ii) the fees chargeable for serving and executing processes issued by the Criminal Courts established within such limits in the case of offences other than offences for which police officers may arrest without a warrant; and

(iii) the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may, from time to time, alter and add to the rules so made.

All such rules, alterations and additions shall, after being confirmed by the local Government, be published in the local official Gazette, and shall thereupon have the force of law.

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

672. **AMENDMENTS.**—The words "*and Revenue*" in the first clause of the section are repealed by the Punjab Land Revenue Act, XVII of 1887. Thus, the High Court at Lahore, cannot make rules regarding process-fees in Revenue Courts.

The words "*and sanctioned by the Governor-General in Council*" are repealed by the Devolution Act, XXXVIII of 1920. The effect is that the control which was formerly exercised by the Governor-General in Council in the matter of confirmation and sanction of rules made under this section has now disappeared.

673. RULE MAKING POWER OF HIGH COURTS.—This section empowers the High Courts to make rules regarding the process fee, (*a*) in its appellate jurisdiction; (*b*) in other Civil Courts subordinate to its appellate jurisdiction; (*c*) in Criminal Courts within such limits, in the case of non-cognisable offences; and, further, rules regarding the remuneration of the peons in the execution of processes issued by Courts. See Local Rules and orders of the several provinces and High Courts; also see Bombay Civil Courts Act, 1869 (XIV of 1869), S. 42; and S. 17, Agra Tenancy Act (M.P. Act, II of 1901); and British Baluchistan Criminal Justice Regulation (VIII of 1896), S. 20 (1) (*a*), and the British Baluchistan Civil Justice Regulation (IX of 1896), S. 92 (*a*).

674. NATURE AND LEVY OF PROCESS FEE.—But, the High Court which makes the rules, has no power to grant the remission of process fee, or permit relaxation of rules which have the force of law, and, therefore, must be followed.[1] Courts have no inherent jurisdiction to consolidate revision petitions in cases which have been disposed of by a single judgment of the lower Court so as to enable the party to file one *Vakalat* in the petitions and pay one process fee for the common respondents.[2] Though the High Court may from time to time alter or add to the rules, it is necessary that the altered rules should before being put in force be confirmed by the Local Government.[3] A sanction by the Governor-General in Council is no longer necessary.[4]

675. PEONS FOR SERVING PROCESSES.—The number of peons to be employed for the service and execution of processes in each district is, by S. 22 of the Court-Fees Act, fixed by the District Judge, and the remuneration is, by S. 20, settled by the High Court. The Court-Fees Act distinctly contemplates that the peons are to be employed, not only for the service of summonses, notices or orders, but for the execution of other processes, such as warrants of arrest, or of attachment and distress.[5] A commission issued to an Ameen to hold a local investigation for the purpose of ascertaining the amount of mesne profits, is not a *process* within the meaning of Cl. 1 of S. 20 of the Court-Fees Act; and Art. 3, Part II, of the rules, promulgated in 1878, framed under that section, is therefore *ultra vires*, and cannot be enforced.[6]

Sections 20 to 23 do not apply to areas to which the Burma Process Fees Act, 1910 (Bur. Act I of 1910) applies.

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(1) In the matter of *H. C. Studd*, 26 Cal. 124; compare 6 Bom.L.R. 475 (*Held*, that the rules may be evaded by plaintiff if he can, the remedy lying in procuring an amendment of the Act, and not in refusing the relief to which the plaintiff is entitled as of right).

(2) In re *Vaithilinga Pandara Sannadhi*, 1930 Mad. 381=31 M.L.W. 294=58 M.L.J. 521=53 Mad. 262=123 I.C. 606 (F.B.); citing, in re *Krishnaya Chandrlu*, 1930 Mad. 376=53 Mad. 248=123 I.C. 203=58 M. L.J. 510=21 M.L.W. 282 (F.B.).

(4) See Devolution Act, XXXVIII of 1920.

(5) *Dharam Chand Lal* v. *Queen Empress*, 22 Cal. 596 (607).

(6) *Jagat Kishore Acharjea* v. *Dinanath Chuckerbutty*, 17 Cal. 281.

Table of process fees.

21. A table in the English and Vernacular languages, showing the fees chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court.

Number of peons in District and Subordinate Courts.

22. Subject to rules to be made by the High Court and approved by the Local Government,

every District Judge and every Magistrate of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Courts subordinate thereto,

Number of peons in Mufassal Small Cause Courts.

and for the purposes of this section, every Court of Small Causes established under Act No. XI of 1865 (*to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*) shall be deemed to be subordinate to the Court of the District Judge.

Comments.

676. **AMENDMENTS.**—In this section the words "and the Governor-General of India in Council," are repealed by Act, XXXVIII of 1920. (The Devolution Act), S. 2, and First schedule. This section is repealed in the Punjab. (See Punjab Land Revenue Act, XVII of 1887).

For the reference to "Act No. XI of 1865," read, the Provincial Small Cause Courts Act, 1887 (Act, IX of 1887), under S. 2 (2) of the General Clauses Act, X of 1897.

677. **RULES IN DIFFERENT PROVINCES:—**

(i) AJMERE—MERWARA.—See Aj., R. and O., Vol. I.

(ii) ASSAM, by the High Court, Calcutta, See Assam Gazette, 1902, Pt. II-A, P. 824.

(iii) BENGAL.—See General Rules and Circular Orders, Civil, and Calcutta Gazette, 1921.

(iv) BOMBAY.—See Bombay, R. and O., Vol. I.

(v) MADRAS.—See Madras R. and O., Vol. I; and *Fort. St. George Gazette*, 1901, Pt. I., p. 104.

(vi) CENTRAL PROVINCES.—See Cent. Prov. R. and O.

(vii) UNITED PROVINCES.—See U.P.R. and O., Vol. I, and U.P. Gazette, 1904, Pt. I, p. 261: also U.P. Gazette, 1903, Pt. I, p. 45.

23. Subject to rules to be framed by the Chief Controlling Revenue-Authority and approved by the Local Government and the Governor-General of India in Council, every officer performing the functions of a Collector of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court or the Courts subordinate to him.

Number of peons in Revenue Courts.

Comments.

678. **AMENDMENTS.**—In the Punjab, S. 23 is repealed, see Punjab Land Revenue Act, XVII of 1887.

679. **RULES:**—

ASSAM.—See Assam Rules and Orders.

CENTRAL PROVINCE.—See Central Prov. Gazette, 1905, Pt. III, p. 570.

MADRAS.—See Mad. R. and O., Vol. I.

24. [*Rep. by the Repealing and Amending Act (XII of* 1891).

CHAPTER V.

OF THE MODE OF LEVYING FEES.

Collection of fees by stamps.

25. All fees referred to in section 3 or chargeable under this Act shall be collected by stamps.

Stamps to be impressed or adhesive.

26. The stamps used to denote any fees chargeable under this Act shall be impressed or adhesive, or partly impressed or partly adhesive, as the [Local Government] may, by notification in the [Local Official Gazette] from time to time direct.

Comments.

680. AMENDMENTS.—For the words "the Governor-General of India in Council," the words "Local Government"; and for the words "*Gazette of India*", the words "Local Official Gazette," are substituted by Act XXXVIII of 1920, (The Devolution Act), S. 2, and First schedule.

681. RULES.—For rules as to levy of Court-fees by adhesive and impressed stamps, see Gazette of India, 1883, Part I, p. 189.

For rules framed by Local Governments under this section, see Appendix.

Where a certificate of heirship in a Hindu family was granted by the Political Agent in a Native State on an ordinary stamp of requisite value, and objection was taken that it was not properly stamped in accordance with Court-Fees Act as required by S. 17 of the Succession Certificate Act (VII of 1889) because it did not bear upon it the words "Court-fee" as directed in the Notification of the Governor-General, No. 361, dated 18th April, 1883, it was held, that though S. 26 of the Court-Fees Act provides that the stamp used to denote the fee chargeable under the Act shall be of such particular kind as the Governor-General of India-in-Council may by notification from time to time direct, and that though the Governor-General had issued such notification, still the direction in the notification, that the stamp should bear the word "Court-fees" was not a matter on which he had authority to give any direction under the terms of S. 26 of the Court-Fees Act, and, therefore, could only be regarded as a departmental order, the non-observance of which could not invalidate the stamp for the pur-

poses of the Act.[1] The practice of receiving on plain papers, the documents which the law requires to be written on stamp paper, accompanied by the value of the proper stamp is strictly prohibited.[2] However, payment may be made in cash to officer of Court, in Madras, in certain cases. See R. 170 (1) of C.R.P. and C.O. of the Madras High Court, Vol. I.

682. STAMPS "FOR USE IN HIGH COURT ONLY."—The Local Government does not appear to have made any rule to the effect that the sale of any stamp may be limited to a particular purpose or Court. "The words impressed on the back of the stamps may have some significance for administrative purposes, but they are not capable of invalidating the stamps themselves."[3] Consequently, stamps impressed on the back with the words "for use in the High Court only", should have been accepted by the Subordinate Judge, and his refusal to accept these stamps was held not justified.[4]

Rules for supply, number, renewal and keeping accounts of stamps.

27. The Local Government may, from time to time, make rules for regulating—

(*a*) the supply of stamps to be used under this Act;

(*b*) the number of stamps to be used for denoting any fee chargeable under this Act;

(*c*) the renewal of damaged or spoiled stamps; and

(*d*) the keeping accounts of all stamps used under this Act:

Provided that, in the case of stamps used under section 3 in a High Court, such rules shall be made with the concurrence of the Chief Justice of such Court.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

Comments.

683. NUMBER OF STAMPS.—In the absence of any rules as to the use of a number of stamps, it was held in some early Calcutta cases, that there is no illegality in making up the stamp fee chargeable in an appeal by means of any number of stamps

(1) *Annapurna Bai* v. *Lakshman Bhikaji*, 19 Bom. 145.
(2) *Bengal Stamp Manual*, 1890, p. 118, S. 8.
(3) *Naresh Chandra Sinha* v. *Charles Joseph Smith*, 97 I.C. 822=1926 Pat. 408.
(4) *Ibid.* 97 I.C. 822=1926 Pat. 408.

of smaller value.[5] A petition of regular appeal bearing 19 bicolour stamps of the value of Rs. 465 were held to be sufficiently stamped under the rules as they stood then.[6] But, though the petition of appeal might be filed on several stamps to make up the full amount required by law,[7] the direction was that when a stamp of the full value is available, parties ought to use as small a number of stamps as they can.[8] The rules as to the use of least possible number of stamps were observed very strictly in a recent Patna case, where plaint required a stamp of Rs. 31, and instead of a single Court-fee stamp of Rs. 30, and adhesive stamp of Re. 1, it bore adhesive stamps of Rs. 20, Rs. 10 and Re. 1 only. The stamp vendor's certificate was attached, but the Court directed stamps to be properly put as required by the High Court rules. The plaintiff complied with this order, and applied for a refund of the previously attached stamps, but the High Court held that the Small Cause Court was unable to grant the refund, and Collector only could have granted a refund on certificate by Court: that the trial Court was right in refusing to treat the plaint as properly stamped, when first filed, because though it was accompanied by a vendor's certificate, still there being many other stamp-vendors at the place, the plaintiff could have obtained a single stamp of Rs. 30.[9] Similarly, where stamps worth Rs. 100, Rs. 95, and some new stamps were affixed on a review application requiring stamps worth Rs. 232 the application was treated to be unstamped and invalid.[10] Where the appellant being unable to procure one stamp files his appeals with two labels with a certificate by treasurer that one label was not in stock, the appeal cannot be rejected or dismissed.[11] If a plaint not properly stamped is returned for presentation to the proper Court under O. 7, R. 10, Civil Procedure Code, the second Court can treat a plaint presented to it in those circumstances as improperly stamped.[12]

684. RULES IN DIFFERENT PROVINCES.—(i) BENGAL.—See Bengal statutory rules and orders, Vol. II, and Calcutta Gazette, 1907, Part I, p. 432, as altered by Notification No. 7175 of 1925. For Eastern Bengal and Assam, *see* Eastern Bengal and Assam Gazette, 1908, Part II, p. 642. But, now see the Notification of the Bengal Government No. 7175 J., dated 9th September, 1925.

"In exercise of the powers conferred by Cl. (*b*) of S. 27 of the Court-Fees Act, 1870, and in supersession of the existing orders on the subject, the Governor-in-Council is pleased to make the following rules to regulate the use of adhesive and impressed

(5) *Mirza Dawd Ali* v. *Syud Nadir Hussein*, 16 W.R. 153.
(6) *Huro Monee* v. *Kristo Indro Shaha*, 17 W.R. 220.
(7) In the matter of *Parinee Churn*, 12 W.R. 449.
(8) *Ranee Khajooroonissa* v. *Mt. Rahimoonissa*, 16 W.R. 152.
(9) *Jangi Pandey* v. *Sandagar Singh*, 1931 Pat. 113.
(10) *Tota Rajayya* v. *Margoni Rajmalaya*, 1931 Nag. 94=130 I.C. 112.
(11) *Bansi Lal* v. *Raghunath Sahai* (1887), 7 A.W.N. 212.
(12) *Lachmi Prasad* v. *Secretary of State*, 1931 Pat. 39=131 I.C. 530.

Court-fee stamps in Bengal, in consequence of the abolition of impressed Court-fee stamps in respect of fees up to Rs. 25 namely :—

"(1) in cases where the amount of fees is less than Rs. 25 and such amount can be denoted by a single adhesive stamp, such fee shall be collected by a single adhesive stamp of the required value. But if the amount cannot be denoted by a single adhesive stamp, or if a single adhesive stamp of the required value is not available, an adhesive stamp of the next lower value available shall be used, and the deficiency shall be made up by the use of more additional stamps of the next lower values which may be required to make up the exact amount of the fee.

"(2) In cases where the amount of fee is equal to or exceeds Rs. 25 and such amount can be denoted by a single impressed stamp, the fee shall be collected by a single impressed stamp of the required value. But, if the amount cannot be denoted by a single impressed stamp, or, if a single impressed stamp of the required value is not available an impressed stamp of the next lower value available shall be used, and the deficiency shall be made up by the use of one or more additional impressed stamps of the next lower values available, which may be required to make up the exact amount of the fee in combination with adhesive stamps to make up fraction of less than Rs. 25." (These rules have been substituted for Rules 6 and 7 of the Government of Bengal, Notification No. 275, S.R.).

The ASSAM Government Notification No. 7865, G.J., dated 22nd December, 1925, contains the additional paragraph :—

"When in any case the fee chargeable under the Act is less than Rs. 25 such fee shall be denoted by adhesive stamps and when the fee amounts to or exceeds Rs. 25, such fee shall be denoted by impressed stamps."

Also see, the GOVERNMENT OF BENGAL NOTIFICATION No. 275, S.R., DATED THE 9TH MARCH, 1907, CLAUSE S. 11. "A document stamped otherwise than in accordance with the preceding rules is not properly stamped within the meaning of S. 28 of the Court-Fees Act."

The BIHAR AND ORISSA GOVERNMENT has made a similar rule.

In Bombay, Central Provinces, and United Provinces, there are similar provisions as to the number of stamps to be used, but without any penal clause in case of breach.

See the respective stamp Manuals, and Local Rules and Orders for a particular Province.

Stamping documents inadvertently received.

28. No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped.

But, if any such document is through mistake or inadvertence received, filed or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct; and, on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

Synopsis.

1. Scope.
2. Application of the section.
3. Document.
4. Validity.
5. Head office.
6. Plaint insufficiently stamped.
7. Memo of appeal insufficiently stamped.
8. Redemption of claim to bring it within Court-fee.
9. Mistake of party, or Court.
10. Effect of payment of deficient Court-fee.
11. Power of revenue officer to demand Court-fee.
12. Powers under section, exercisable before final decision.

685. **SCOPE.**—Part I of the section is to be read with Ss. 4 and 6, which it supplements. The first part provides that unless a document is properly stamped, it has no validity.

Part II of the section provides for orders being given by the presiding officer of Court, head of office, or a Judge of the High Court, for deficiency in Court-fee stamp being made good in the manner directed.

This section does not conflict with the other provisions of the Court-Fees Act in Ss. 9, 10 and 11, nor is it in conflict with the provisions of Civil Procedure, O. 7, R. 11.[13] Where a document has been admitted in the trial Court without Court-fee, it is not a party's right to object, and the appellate Court may direct the payment of proper Court-fee before it acts upon the document.[14]

686. **APPLICATION OF THE SECTION.**—This section applies where a document requiring Court-fee has been received by mistake or inadvertently. Where owing to plague restrictions, the plaintiff was unable either to procure a Court-fee stamp or present his plaint in person, and he sent a plaint which was unstamped, by post to the District Judge, within time, and it was forwarded to Munsiff for disposal, but the requisite Court-fee was paid in after the expiry of time, when the plague restrictions were removed, it was held by the Punjab Chief Court, that there being no question of mistake or inadvertence, the plaint could not be regarded as valid under S. 28 of the Court-Fees Act; that the Collector had no power to exempt under the Act; and that the receipt of plaint through post could not be considered to be a

(13) *Balkaran Rai* v. *Govindanath*, 12 All. 129=10 A.W.N. 39 (F.B.).

(14) *Maneklal Vadilal* v. *Chandulal Balabbai*, 94 I.C. 646=1926 Bom. 343.

presentation.[15] This section does not apply to probates or letters of administration.[16] Another exception may be noticed, as to admission in criminal cases of documents for which proper fee has not been paid.[17]

687. "DOCUMENT".—The term "Document" in this section has the same meaning, as in Ss. 4 and 6 of the Act. A memorandum of appeal is a document included in the First and Second Schedules to the Court-Fees Act, and is a "document" within the meaning of Ss. 4, 25, 28 and 30 of the Act; and therefore, cannot be filed, or recorded, or received by the High Court unless and until the proper Court-fee in respect of it is paid.[18]

688. VALIDITY.—A document is not of any validity till it is properly stamped.[19] But the word "Validity" is to be considered as used for purposes of the Court-Fee Act only. It was not the purpose of the Court-Fees Act to supplement the provisions of the Limitation Act.[20] The effect of S. 28 is that if the necessary Court-fees on a document are paid within the time allowed by the Court, the document may be treated as valid from the date on which it was first filed.[21]

689. HEAD OF OFFICE.—The expression "Head of the Office" in S. 28, refers not to the head of the office of a Court, or High Court, but to the head of a public office, *e.g.*, the Board of Revenue.[22]

690. PLAINT INSUFFICIENTLY STAMPED.—If a plaint is filed with an inadequate Court-fee, it is the duty of the Court to call upon the plaintiff to make good the deficiency, within a time to be fixed by the Court.[23] If the Court-fee is supplied within the time fixed by Court, the plaint is taken as properly stamped from the date of its presentation.[24] No question of

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(15) *Lakha* v. *Munshi Ram*, 38 P.R. 1900. (This ruling was previous to enactment of S. 149, C. P. Code.)

(16) See S. 19-K. *ante*; also see in the goods of *Bhubaneswar Trigunait*, 95 I.C. 529=29 C.W.N. 879=1925 Cal. 1201.

(17) See S. 33, *post*.

(18) *Balkaran Rai* v. *Gobind Nath Tewari*, 12 All. 129=10 A.W.N. (1890), 39 (F.B.).

(19) *Balkaran Rai* v. *Gobind Nath Tewari*, *supra*.

(20) *Gavarangu Sahu* v. *Botokrishna Patro*, 4 I.C. 503=32 Mad. 305=6 M.L.T. 129 (F.B.).

(21) *U Shim* v. *Maung Tha Gwye*, 1931 Rang. 38=8 Rang. 538.

(22) *Balkharan Rai* v. *Gobind Nath Tewari*, 12 All. 129=10 A.W.N. (1890), 39 (F.B.).

(23) C. P. Code, O. 7, R. 11; also see *Akkaraju* v. *Akkaraju*, 26 I.C. 33 (34)=27 M.L.J. 677; *Nussurut Ali* v. *Mahomed Kanoo*, 11 W.R. 541; *Jiwandas* v. *Khushali*, 39 I.C. 766=27 P.L.R. 1917=29 P.W.R. 1917; *Ram Sahey* v. *Ram Pandey*, 42 I.C. 675=3 P.L.J. 74; *Deo Nath* v. *Radha Kant*, 70 I.C. 378=1922 Pat. 56=3 P.L.T. 142; *Basavayya* v. *Venkatappayya*, 95 I.C. 439=1926 Mad. 676=1926 M.W.N. 341=51 M.L.J. 90; *Dhondiram Bin Laxman* v. *Taba Savadan*, 27 Bom. 330=5 Bom.L.R. 198.

(24) See C. P. Code, S. 149.

limitation arises, as the date of institution would be reckoned from the date of the presentation of the plaint, and not from the date on which the requisite Court-fees are subsequently put in.[25] A plaint cannot be rejected, nor a suit dismissed, for insufficiency of Court-fee stamp unless the plaintiff is *given an opportunity* to supply the deficient stamp within a time to be fixed by the Court, and he fails to do so.[26] The time allowed may be extended, expressly or impliedly under S. 148, Civil Procedure Code.[27] The Court has a discretionary power to enlarge the time originally fixed for making good the requisite stamp. Where the plaintiff fails to put in the Court-fee within a time fixed by the Court, but puts in the Court-fee on a subsequent date, the Court may, in the circumstances of the case, not reject the plaint, but regard it as presented and filed on the date it was registered.[28] The Court can extend the time *ex post facto* that is, it is competent to the Court to extend the time to put in the insufficient Court-fee on a plaint even after the expiry of the time originally granted.[29] Where there is an order as S. 149 contemplates, and a payment in conformity with the terms of that order, a discretion exercised properly under the section cannot be challenged in appeal.[30] Such extensions may be granted by the Court even more than once.[31] If the absence of plaintiff, leading to a dismissal of suit in default, is explained, the suit may be restored, and Court-fee accepted even after the due date, under circumstances which the Court considers satisfactory, *e.g.*, where on the due date the supply of Court-fee was exhausted in the Treasury.[32] The NAGPUR JUDICIAL COMMISSIONER'S COURT, also recognises that a Court has power under Ss. 148 and 149, and O. 17, R. 1, Civil Procedure Code to grant an extension of time originally granted for the payment of deficit Court-fees.[33] Similarly, the OUDH

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(25) Also see *Hem Chandra Ghosh* v. *Durga Pada Neogi*, 3 I.C. 435; and *Moti Sahu* v. *Chhatri Das*, 19 Cal. 780; *Hari Mohan* v. *Naimuddin*, 20 Cal. 41; *Surendra Kumar* v. *Kunj Behary*, 27 Cal. 814; *Roy Kishore* v. *Madan Mohan Singh*, 31 Cal. 75; *Gavaranga* v. *Botakrishna*, 32 Mad. 305 (F.B.); *Ram Dial* v. *Sher Singh*, 74 I.C. 358=45 All. 518=1923 All. 538; also see *U Shin* v. *Maung Tha Gwye*, 129 I.C. 500=1931 Rang. 38=8 Rang. 538 (Document may be treated as valid from date of filing if necessary Court-fee is allowed within time allowed).

(26) *Radhakanta* v. *Debendra Narayan*, 49 Cal. 880=70 I.C. 101=1922 Cal. 506; *Mt. Jantan* v. *Ahmad*, 106 I.C. 817=1928 Lah. 221; *Achut* v. *Nagappa*, 21 I.C. 337=38 Bom. 41; *Subramaniya Iyer* v. *Rama Iyer*, 105 I.C. 881=54 M.L.J. 67=1927 Mad. 1002; *Deo Raj* v. *Kunj Behari*, 1930 Oudh 104=6 O.W.N. 1105=5 Luck. 474; also see *Wasawa Ram* v. *Bahadur Chand*, 25 I.C. 24=194 P.L.R. 1914; *Khushal Singh* v. *Puran Singh*, 156 P.R. 1888; *Nanak Chand* v. *Jiwan Mal*, 25 I.C. 435=35 P.R. 1914; *Manamatha Nath* v. *Rohilli Mohini*, 27 All. 406 (410).

(27) *Raj Kishori* v. *Madan Mohan*, 31 Cal. 75.

(28) *Padmanund Singh* v. *Anantlal Misser*, 34 Cal. 20 (F.B.).

(29) *Amir Hossain Khan* v. *Nauhab Chand*, 6 I.C. 424 (Cal.).

(30) *Priya Nath* v. *Mianjan*, 29 I.C. 571.

(31) *Nasir Mandal* v. *Satis Chandra Ghosh*, 51 I.C. 154.

(32) *Muhammad Shafi Muhammad Azub* v. *Delhi House of Muetan*, 1928 Lah. 274.

(33) *Nand Kishore* v. *Jeo Nath*, 93 I.C. 64=1926 Nag. 312.

CHIEF COURT holds that Courts and the rules of procedure regulating their conduct are intended for the broad purpose of facilitating justice, and not for impeding it; and, where the plaintiff was not able to pay an additional Court-fee on the day fixed, but on the next day, it was held that the rejection of the plaint was an abuse of the powers of the Court under the circumstances, and that the Court ought to have accepted the amount tendered.[34] In a PATNA case, where on an order directing payment of deficit Court-fees, money was paid by plaintiff to pleader's clerk, who failed to pay the Court-fees, and misappropriated the amount, the Court exercised its inherent jurisdiction in accepting the Court-fee after expiry of the time allowed, and restored the suit dismissed in default.[35] The Court has power to review its own order rejecting a plaint for failure to supply deficient Court-fee stamps within the time allowed. Once an order rejecting the plaint is set aside on review, the Court has full power to extend the time for payment of the deficit Court-fee.[36]

691. MEMORANDUM OF APPEAL INSUFFICIENTLY STAMPED.—An insufficiently stamped memorandum of appeal is not valid. It is the duty of counsel when filing an appeal to see that all documents which require a stamp are properly stamped. He cannot shelter himself behind his clerk's negligence.[37] The BOMBAY,[38] and CALCUTTA[39] High Courts, and also the CHIEF COURT OF OUDH[40] have applied the provisions of O. 7, R. 11 to memoranda of appeals by virtue of S. 107, Civil Procedure Code (2), which invests an appellate Court with the same powers as are conferred on a Court of original jurisdiction. But, the High Court of Allahabad,[41] holds that an appellate Court is not bound to accept an insufficiently stamped memorandum of appeal. It may direct the memorandum to be returned to the counsel with liberty to file it afresh on payment of full Court-fees accompanied by an application for extension of time under S. 5 of the

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(34) *Kamakhya Dat Ram* v. *Shyam Lal*, 104 I.C. 527=1927 Oudh 507 =1 Luck 574.

(35) *Adit Prasad Singh* v. *Ramhorakh*, 91 I.C. 213=1925 Pat. 435= 4 Pat. 180.

(36) *Surendra Prosad* v. *Aftabuddin Ahmed*, 70 I.C. 43=1922 Cal. 234 =26 C.W.N. 391.

(37) *Shabadat* v. *Hukam Singh*, 71 I.C. 736=1924 Lah. 401 (An appeal cannot be regarded as validly presented if the copy of order appealed against is not properly stamped); also see *Shahu* v. *Bahri*, 67 I.C. 901= 1921 Lah. 43.

(38) *Achut* v. *Nagappa*, 21 I.C. 337=38 Bom. 41 (Courts should have free and unshackled discretion in the matter).

(39) *Nussurut Ali* v. *Mahomed Kanod*, 11 W.R. 541 (Duty of Court to give the appellant an opportunity of filing the proper stamp); *Jnanadasundari* v. *Madhabchandra*, 1932 Cal. 482=59 Cal. 388=138 I.C. 643; (*Bona fide* mistakes in valuation, but not deliberately understamped memoranda of appeal, excused).

(40) *Deoraj* v. *Kunj Behari*, 124 I.C. 420=5 Luck. 474=1930 Oudh 104 (reasonable time should be allowed to make good the deficient Court-fee).

(41) *Brijbhukan* v. *Tota Ram*, 118 I.C. 228=50 All. 980=1929 All. 75.

Limitation Act. The practice of filing appeal with insufficient Court-fees stamps knowing that they are insufficient with a view to save limitation should not be permitted.[42] The LAHORE HIGH COURT takes a similar view, that a deliberate omission to pay the proper Court-fee in spite of knowledge of law on the subject, will not be excused and the discretion of Court to allow the deficiency in Court-fee to be made up will be exercised only where there has been a *bona fide* mistake of Counsel.[43] Where the appellant had not paid Court-fee even on his own valuation of his claim, it was held that the appellant had failed in his duty to stamp the memorandum of appeal, and his pleas of poverty and ignorance of law being unfounded, there was no valid memorandum of appeal presented within the period of limitation prescribed for the appeal.[44] Whele there is gross negligence in valuing an appeal, and in making up the deficiency of Court-fee in time, the delay cannot be condoned so as to save limitation.[45] The PATNA High Court holds that S. 149, Civil Procedure Code, should not be construed in such a way as to nullify the express provisions of S. 4 of the Court-Fees Act. Where the amount of Court-fee payable is open to doubt or cannot be ascertained by the Court till the record is received or it appears that the appellant has made an honest attempt to comply with the law, the Court may properly receive the appeal and allow time for deficiency, if any, to be made good. Where, however, an appellant deliberately and to suit his own convenience pays insufficient Court-fee on his appeal, the Court is not bound to receive the appeal and give the appellant time to make good the deficiency.[46] The NAGPUR JUDICIAL COMMISSIONER'S COURT draws a distinction in this connection between the powers of an original Court under O. 7, R. 11, Civil Procedure Code, and those of an appellate Court; in the former case the Court is bound to give time to plaintiff to make up the deficient Court-fee and in the latter case the Court has a discretion to grant the appellant time or not, which the Court may refuse to exercise under S. 149, Civil Procedure Code.[47] The MADRAS HIGH COURT has not been consistent on the point.[48] Where an appeal is filed in time and the deficiency is made good within the time fixed by Court, the consensus of opinion is that the presentation of the appeal relates back to the original date.[49] Where an appeal in a money suit is not properly stamped, it cannot be dismissed *in toto*, but it will not admit the passing of

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(42) *Brijbhukan* v. *Tota Ram*, 1929 All. 75, *supra*.

(43) *Lekh Ram* v. *Ramji Das*, 1 Lah. 234=57 I.C. 215.

(44) *Shahu* v. *Bakri*, 67 I.C. 901=1921 Lah. 43.

(45) *Gursaran Das* v. *District Board*, 102 I.C. 615=1927 Lah. 884.

(46) *Ram Sahay Ram Pandey* v. *Lakshmi Narayan*, 42 I.C. 675=3 P. L.J. 74=5 P.L.W. 18; also see *Jodhem Pershad* v. *Naukhu*, 46 I.C. 509 (Pat.).

(47) *Atma Ram* v. *Kastur Chand*, 124 I.C. 241=1930 Nag. 224=26 N.L.R. 183.

(48) *Narayan Rao* v. *Seshamma*, 26 I.C. 33=27 M.L.J. 677; *cf.* 1932 M.W.N. 104.

(49) 15 Mad. 78; 38 I.C. 617=40 Mad. 687; 19 Cal. 747 (749).

a decree in excess of the sum for which the Court-fee has been paid.[50]

692. **REDUCTION OF CLAIM TO BRING IT WITHIN COURT-FEE.**—The ALLAHABAD HIGH COURT, has held, in *Ram Prasad* v. *Bhiman*,[1] that when a plaintiff in the initial stage of the litigation abandons a portion of his claim, he can not compelled to pay Court-fees in respect of the portion abandoned under penalty of having the whole of his suit dismissed. The MADRAS HIGH COURT agrees with this view, holding that it is open to a plaintiff to relinquish a portion of his claim to bring it within a certain fee. Where, therefore, a plaintiff being ordered to make up deficient Court-fee instead of doing so, reduces his claim, and returns the plaint with a correct Court-fee within the period prescribed by Court, the suit cannot be dismissed.[2] Similarly, there is nothing to debar an appellant from relinquishing a part of his claim and to claim the rest, paying Court-fee stamp on the memorandum of appeal on the claim as reduced on appeal.[3] However, the Bombay and Calcutta High Courts take the view that the plaint has to be rejected under the mandatory provisions of O. 7, R. 11, Civil Procedure Code. According to the CALCUTTA High Court, a Court has no alternative but to reject a plaint written upon an insufficiently stamped paper, when the plaintiff on being required by the Court to supply the requisite stamp paper within the time fixed by the Court fails to do so.[4] The BOMBAY High Court similarly holds that a plaintiff who has not properly valued his claim or paid a sufficient Court-fee is not entitled at the last moment to an option to abandon part of his claim and retain only that part for which he has paid a sufficient Court-fee.[5] But the Lahore High Court holds that though the memorandum of appeal is not properly stamped the appeal can be heard to the extent of the fee paid.[6]

693. **MISTAKE OF PARTY OR COURT.**—A Full Bench of the Allahabad High Court has held, in *Hari Ram* v. *Akbar Hussain*,[7] that when it has been discovered that through mistake or inadvertence, a plaint has been filed on an insufficient Court-fee stamp, the Court can, at any time, without any regard to limitation, have the proper Court-fee made up, and when it is so

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(50) *Nihal Chand Atma Ram* v. *Sardarimal*, 96 I.C. 135=1926 Lah. 558.

(1) 27 All. 151=1 A.L.J. 577=1904 A.W.N. 198.

(2) *Neelachalam* v. *Narasingh Dass*, 1931 Mad. 716=1931 M.W.N. 677 34 M.L.W. 252=134 I.C. 816.

(3) *Karam Chand* v. *The Jullumdhar Bank, Ltd.*, 102 I.C. 705=1927 Lah. 543=9 L.L.J. 293 (also see F.N. 50, above).

(4) *Midnapore Zemindary Company* v. *Secretary of State*, 40 I.C. 96 =44 Cal. 352=21 C.W.N. 834.

(5) *Valli Ise Amanji* v. *Mahmad Adam Asmal*, 26 I.C. 746=16 Bom. L.R. 763.

(6) *Shah Mohammad* v. *Syed Shah Mohammad*, 1931 Lah. 237=32 P.L. R. 129=131 I.C. 297; citing 1926 Lah. 558=96 I.C. 135, (F.N. 50 *supra*.).

(7) 29 All. 749 (F.B.).

made up, the plaint is as valid as if it had been properly stamped when presented. "Mistake" means a slip, made not by design, but by mischance. A mistake may not be discovered till the case has gone into appeal,[8] or second appeal,[9] and the High Court may direct a document to be properly stamped in second appeal where the deficiency was detected for the first time in the appellate Court. The "mistake or inadvertence," to be excused under S. 28 of the Court-Fees Act, is a mistake on the part of the Court or its officers, and not on the part of parties, or their legal advisers.[10] A mistake of party was not excused in several ALLAHABAD cases.[11] But, a mistake of law has been held to fall within this section.[12] In many cases, a mistake of a party might reasonably be held to be the mistake of Court.[13] Where the plaint has been received in office due to the mistake of the officer of Court this section has been applied.[14] The Punjab Chief Court has refused to condone the mistake of a party, which could have been avoided by the exercise of due care and attention.[15] Similarly in Allahabad, miscalculations on the part of the plaintiff have led to the dismissals of suit due to bar by limitation.[16]

A Court of appeal is not bound by the decision of the Court-below, as to the proper stamp duty on a plaint.[17] However, a party may be estopped from raising an objection to Court-fee on second appeal, when he had, as appellant in the Court below, accepted the trial Court's finding on the issue raised as to Court-fee, for purposes of appeal.[18] The Court has in all such cases, the power to investigate the nature of the mistake occasioning a delay in payment of proper stamp duty, and, where in the exercise of

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(8) *Tahal Singh* v. *Dubri Rai*, 28 All. 310; also see *Valambal* v. *Vythilinga*, 24 Mad. 331.

(9) *Chedilal* v. *Kirath Chand*, 2 All. 682 (F.B.); *Debendra Mohan* v. *Sona Kuar*, 21 A.W.N. 21; and *Chenappa* v. *Raghunath*, 15 Mad. 29.

(10) *Balbaran Rai* v. *Gobinda Nath*, 12 All. 129=10 A.W.N. 39 (F.B.); also see *Dilawar Hussain* v. *Bhagwat Das*, 27 A.W.N. 63=4 A.L.J. 130.

(11) *Ram Tabal Singh* v. *Dubri Rai*, 28 All. 310=(1906) 26 A.W.N. 21=3 A.L.J. 838; *Munro* v. *The Cawnpore Municipal Board*, 12 All. 57=9 A.W.N. 197; *Muhammad Ahmad* v. *Muhammad Sirajuddin*, 23 All. 423.

(12) *Haricharan* v. *Baikuntha Nath*, 21 I.C. 866 (Mistake as to basis of calculation); also see *Valambal* v. *Vythilinga*, 24 Mad. 331, s.c.; an appeal, 25 Mad. 380=11 M.L.J. 119 (mistake as to basis of calculation).

(13) 29 All. 749 (F.B.); citing 23 All. 423; and 27 All. 411.

(14) *Hassibulnissa* v. *Ghafurullah*, 29 All. 382=27 A.W.N. 110=4 A.L.J. 363; *Anupa* v. *Madho Singh*, 22 A.W.N. 153; *Debendra Mohan* v. *Sona Kuar*, 21 A.W.N. 21.

(15) *Fatteh Singh* v. *Babu Ram*, 67 I.C. 130.

(16) *Muhammad Ahmad* v. *Muhd. Sirajuddin*, 23 All. 423 (mistake in calculation of fee); *Chatterpal* v. *Jagrar*, 27 All. 411.

(17) *Moti Gadri* v. *Pranjiwan Das*, 6 Bom. 302.

(18) *Chunilal* v. *Bank of Upper India*, 40 I.C. 904=106 P.W.R. 1917.

its discretion it allows the deficiency to be made up, it will not be interfered with by the appellate Court.[19]

694. POWERS UNDER THE SECTION, WHEN EXERCISABLE.—It has been held by Mahmod, J., in *Mahadei* v. *Ramkishendas,* that as soon as the Judge has passed his decree, he ceases to have any power over the case, and is not competent to introduce into it new matters not dealt with by the judgment. Consequently no order calling for additional Court-fee, and the payment of the same can be made in proceedings, under O. 7, R. 11, Civil Procedure Code, or under S. 12 read with S. 10 (11), as these powers are intended to be exercised before the disposal of the case, and not after it has been decided finally, so far as that Court is concerned. Oldfield, J., took the opposite view holding that the collection of Court-fees is no part of the Judge's functions in the trial of a suit which can be said to have ceased with its determination.[20]

695. POWER OF REVENUE OFFICER TO DEMAND COURT-FEE.—A Revenue Officer has the power under S. 28 of the Court-Fees Act to direct the payment of Court-fee in revision, when no objection has been raised as to the same in the Court of first instance.[21]

29. Where any such document is amended in order merely to correct a mistake and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

Amended document.

Comments.

696. SCOPE.—This section applies to *amendments* of documents, and not to entirely fresh documents. For instance, where plaintiff sued first in the Revenue Court for (1) value of produce, and (2) value of trees, and the Revenue Court decided the claim as to first part and referred the plaintiff to a Civil Court for the second part, and a fresh suit was brought in the Civil Court for the second part accordingly, but on unstamped paper, it was held, by the Punjab Chief Court, that the plaint filed in the Civil Court was an entirely fresh document and required the usual stamp; and S. 29 of the Court-Fees Act did not apply to the plaint in the second suit, since there had been no amendment of a document at all.[22]

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(19) *Ram Sahai* v. *Ram Pandey,* 42 I. C. 675=3 P. L. J. 74 (F.N. 46, above); *cf. Jai Singh* v. *Sitaram Singh,* 74 I.C. 757=1924 All. 529 (No power to reject memo. of appeal for insufficiency of Court-fee); also see *Gurusaran Das* v. *District Board Jullundhar,* 102 I.C. 615=1927 Lah. 884.

(20) 7 All. 528=5 A.W.N. (1885) 140.

(21) *Dhakeshwar Prosad* v. *Ishwardhari Singh,* 30 I.C. 862=22 C.L. J. 57. = 1915 Cal 701 & 01.

(22) *Ganda Ram* v. *Sain,* 132 P.R. 1892.

30. No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

Cancellation of stamp.

Such officer as the Court or the head of the office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

Comments.

697. **RETURN OF PLAINT FOR PRESENTATION TO COURT OF PROPER JURISDICTION**.—A Full Bench of the BOMBAY High Court, has held that where, after a trial has begun, or even after it has concluded, it appears that the Court has not jurisdiction to hear the case, the plaint should be returned in order that it may be presented to the proper Court, and no additional Court-fees are payable.[23] A Full Bench of the MADRAS High Court, has similarly held, that where Court-fee is paid upon the institution of a suit in a Court which cannot grant the relief sought, and consequently, the plaint is returned for presentation to the proper Court, the plaintiff, on filing the plaint, in the latter Court, is entitled to take credit for the amount of the Court-fee levied in the Court to which it was first presented, even though the stamp was *cancelled* before the plaint was returned.[24] The plaint cannot be said to be unstamped *quod* the cancelled stamp. A document does not cease any the less to be a properly stamped document by the cancellation of the stamp.[25] It continues to be properly stamped. By cancellation the stamp cannot be used again, but when a document which is the plaint in one Court, is rightly presented in another Court, as a plaint in another Court, the stamp is not being used again. The cancellation in such cases must be taken to be set aside by the order returning the plaint.[26]

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(23) *Prabhakar Bhat* v. *Vishwambhar*, 8 Bom. 313 (F.B.); also see *Kandu* v. *Konda*, 8 Mad. 62.

(24) *Visweswara Sarma* v. *Dr. T. M. Nair*, 10 I.C. 201=21 M.L.J. 533=10 M.L.T. 29=35 Mad. 567 (F.B.).

(25) *Ibid.* per *White, C. J.* in 10 I.C. 201 (F.B.), *supra*.

(26) *Ibid.* per *Sankaran Nair, J.* in 10 I.C. 201 (F.B.), *supra*. The Punjab Chief Court took the same view in *Mt. Amin Jan* v. *Ibrahim*, 91 P.R. 1884, where the earlier Bombay case in 7 Bom. 487, was not followed. *Held* per *Plowden, J.*, that "when the provisions of the Court-Fees Act and C.P. Code have been complied with in the first instance, there is no violation either of the letter or the spirit of either Act by the Court which receives a plaint on its second presentation notwithstanding that it bears a cancelled stamp."

698. PRESENTATION OF PLAINT.—A Division Bench of the Calcutta High Court, in *Hedbot Khesia* v. *Karan Khasiam*[27] has held that when the plaint which has been returned is presented in a Court of competent jurisdiction the suit must be taken to be instituted on the date of such presentation. Accordingly, if the Act is amended in the meantime, increasing the amount of fee payable thereunder, the Court-fee payable is that leviable under the new Act after crediting the plaintiff with the Court-fee originally paid.[28] Where a plaint is returned for presentation to the proper Court, the plaintiff can take advantage of the Court-fees that are paid on the previously filed plaint, and he can pay the deficient Court-fees in the Court having jurisdiction to hear the case.[29]

699. RULES FOR THE CANCELLATION OF STAMPS.—The Madras Government, and the Lahore High Court have framed rules for the cancellation of stamps.[30]

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(27) (1911) 15 C.L.J. 241.

(28) *Bimala Prosad Mukerji* v. *Lal Moni Devi*, 1926 Cal. 355=30 C. W.N. 90=91 L.C. 862.

(29) *Ganesh Tavanappa Burde* v. *Tattya Bharmappa Mirji*, 1927 Bom. 257=51 Bom. 236=29 Bom.L.R. 280=101 I.C. 343.

(30) See *Circular Orders*, Lahore High Court; also see *Civil Rules of Practice*, and *Circular Orders*, High Court, Madras, Vol. I, p. 180.

CHAPTER VI.

MISCELLANEOUS.

Repayment of fees paid on applications to Criminal Courts.

31. [*Repealed.*]*

32. [*Repealed.*]†

Admission in criminal cases of documents for which proper fee has not been paid.

33. Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in section 4 or section 6 shall be deemed to prohibit such filing or exhibition.

Comments.

Sections 4 and 6 provide for levy of fees in High Court and in Mofussil Courts and Offices, and they prohibit the filing, exhibiting, recording, receiving, or the furnishing of any document specified in the First or Second Schedule to the Act, unless the proper fee prescribed is paid in respect of the document. This section is a relaxation of the stringency of the aforesaid sections when applies to documents admitted in Criminal cases.

Sale of stamps.

34. (1) The Government may from time to time make rules for regulating the sale of stamps to be used under this Act, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

(2) All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

(3) Any person appointed to sell stamps who disobeys any rule made under this section, and any person not so appointed who sells or offers for sale

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*S. 31 was repealed by Act XVIII of 1923, S. 163 and S. 546-A has been substituted for it in the Cr. P. Code.

†S. 32 was repealed by the Repealing and Amending Act, (XII of 1891). It related to the amendment of Act VIII of 1859 and Act IX of 1869.

any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Comments.

700. **IRREGULAR SALES**.—A plaint should not be stamped with impressed and adhesive stamps bearing names of different Attorneys, and different dates, this being quite irregular. The practice among Attorneys to accommodate each other in respect of unused stamps were deprecated. But this section is no bar to a pleader, or banker purchasing stamps in bulk, and affixing them to the documents as and when the occasion arises: (*vide* Civil Procedure Circular, dated 21st October, 1895). A purchase of stamp through another person, and using it, is not prohibited by this provision—(Madras Board proceedings, No. 247, 1459 R. Mis., dated 22nd October, 1919).

701. "**SELLS OR OFFERS FOR SALE**".—These words, include the case of a thief who exchanges a stolen stamp for a sum of money, even though the thief cannot pass a legal title by the transfer, in regard to a stamp stolen by him.[1] Licensed vendors cannot purchase-stamps from private persons (*vide*, Madras Board Proceeding No. 2366, R. Miss., dated 14th October, 1902).

702. **EXCHANGE OF STAMPS**.—An exchange of stamp is not a "sale" within the meaning of the Act. A transfer of a Court-fee stamp by a mukhtear, who had purchased the stamp for a client, to another client, the latter having agreed to return to the mukhtear another Court-fee stamp of the same value, is not an offence within S. 34 of the Act.[2] This has been relied upon, in a Lahore case, where a stamp was purchased for a client across which the stamp vendor wrote the client's name. The unused stamp was altered in the name on the stamp, to avoid application for refund, and it was used for another client, without dishonest or fraudulent intent being made out. It was held that S. 34 was not applicable.[3] But, removing a new Court-fee stamp from a document, and substituting a used one with figures altered constitutes the offence of forgery under S. 477-A, Indian Penal Code.[4] A person can make a *gift* of Court-fee stamp to another.[5]

Power to reduce or remit fees.

35. The Local Government may, from time to time by notification in the Local Official Gazette, reduce or remit in the whole or in any part of British

(1) *Queen-Empress* v. *Virasami*, 24 Mad. 319 (321).

(2) *Kedarnath Shaha* v. *Emperor*, 30 Cal. 921.

(3) *Emperor* v. *Abdul Hakim*, 1931 Lah. 337=1931 Cr. C. 465=133 I.C. 645=32 Cr.L.J. 1051=17 A. I. Cr. R. 88=32 P.L.R. 432.

(4) *Emperor* v. *Bibidanandha*, 47 Cal. 71.

(5) *Bibi Chandoo* v. *Jwala Pershad*, 11 I.C. 480.

India, all or any of the fees mentioned in the First and Second Schedules to this Act annexed, and may in like manner cancel or vary such order.

Comments.

703. AMENDMENT.—The words "Local Government", for "Governor-General of India in Council"; and the words "Local Official Gazette", for the words "Gazette of India", have been substituted by the devolution Act XXXVIII of 1920.

704. RULES.—For rules framed by the Government under this section, and S. 26, see *Appendix*.

Saving of fees to certain officers of High Court.

36. Nothing in Chapters II and V of this Act applies to the commission payable to the Accountant-General of the High Court at Fort William, or to the fees which any officer of a High Court is allowed to receive in addition to a fixed salary.

SCHEDULE I.

AD VALOREM FEES.

Number.		Proper Fee.
1. Plaint written statement pleading a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) or of cross-objection presented to any Civil or Revenue Court except those mentioned in section 3.	When the amount or value of the subject-matter in dispute does not exceed five rupees,	Six annas.
	When such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees.	
	When such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees.	Twelve annas.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to five thousand rupees.	Five rupees.
	When such amount or value exceeds five thousand rupees, for every two hundred any fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees.	Ten rupees.
	When such amount or value exceeds ten thousand	Fifteen rupees.

Number.		Proper Fee.
1. Plaint, etc.— (*Contd.*)	rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, upto twenty thousand rupees.	
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees up to thirty thousand rupees.	Twenty rupees.
	When such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees.	Do.
	When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees:	Twenty-five rupees.
	Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be three thousand rupees.	

Comments.

705. AMENDMENTS.—By S. 155, and Sch. IV, Civil Procedure Code, 1908, the expression "written statement pleading a set-off or counter-claim", and the words "or of cross-objection", have been introduced after the words "plaint", and "Act", respectively. The effect of this amendment makes a written statement pleading a set-off or counter claim, and a memorandum of cross-objection, liable to Court-fee, under Sch. I, Art. I, of the Act, *ad valorem* on the value of the subject-matter in dispute.

706. LOCAL AMENDMENTS.—This article has been locally amended in the various provinces, *viz.*, in Bengal, by Act IV of 1922; in Bihar and Orissa, by Act II of 1922; in Bombay, by Act II of 1932; in Madras, by Act V of 1922; in Punjab by Act VII

of 1922; and, in United Provinces, by Act III of 1932. *Vide* Appendices, *infra*.

707. **SCOPE OF THE SCHEDULES.**—"Suits and memoranda of appeals are classified according to the subject-matter, or the subject-matter in dispute or the nature of relief claimed. Schs. I and II, endeavour to give a comprehensive classification of the various kinds of suit with reference to these heads of classification. The schedules also provide that the proper fee payable on some documents shall vary according to the Court in which they are filed, and that in regard to others there shall be no variance."[1] Sch. I, specifies various suits in which the plaints and appeals shall bear an *ad valorem* fee; and, Sch. II, declares that the plaints and appeals in the suits therein specified shall bear the fixed fees prescribed.[2]

708. **SCOPE OF ART. 1, SCH. I. Different views.**—Two views have prevailed as to this article. One view is that this article is supplementary to S. 7 of the Act, which is a substantive provision prescribing the mode of calculating the *valuation* of particular suits, upon which the *amount* of Court-fee payable is determined by Art. 1, Sch. I. The NAGPUR Court has held that Sch. I does not stand by itself, and does not enact anything except the percentage of Court-fee, for the purpose of appeal, on the value of the relief ascertained for the purpose of the plaint under S. 7.[3] According to this view, the charging section as regards both suits and appeals is S. 7, and the *Oudh* Court also holds that the provisions of S. 7 of the Court-Fees Act are applicable equally to appeals as to original suits, and that the word "*suit*" in S. 7 of the Act is not used in contradistinction to the word appeal.[4]

In 3 All. 108, F.B. the view taken was that the wording of Art. 1, Sch. I, suggests a provision fixing the amount of fee chargeable, but it was observed that Ss. 7 and 8, specifiying the category of likely causes of action, were conceivably not exhaustive, and Sch. I, Art. 1, is purposely so expressed as to include "*any* plaint or memorandum" of any kind or description other than that contemplated by Ss. 7 and 8; and the words" not otherwise provided for in this Act" relate back to those two sections.[5]

The ALLAHABAD view is that S. 7 of the Court-Fees Act is applicable to suits only and not to appeals,[6] and this ruling was accepted as good law in the reference under the Court-Fees Act, reported in I.L.R. 29 Madras 367. According to this view

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(1) Per *Mullick, J.*, in 87 I.C. 137 (147)=6 P.L.T. 262=1925 Pat. 392=4 Pat. 336 (F.B.).

(2) *Ibid.* 87 I.C. 137 (147) (F.B.), *supra.*

(3) 8 I.C. 1125=6 N.L.R. 104; (*Dhiraj Singh* v. *Rajaram*).

(4) 1922 Oudh 82=25 O.C. 30 (*Sangat Bahsh Singh* v. *Rawat Dijdeo Bahsh Singh*).

(5) 3 All. 108 (F.B.) (*Ragobir Singh* v. *Dharam Kuar.*)

(6) 27 All. 447 (*Narpat Rai* v. *Debi Prasad*); see F.N. 30, below.

the value of the subject-matter in dispute in appeal is the criterion for the purpose of computing the fee under Art. 1, Sch. I.[7]

709. "**NOT OTHERWISE PROVIDED FOR**".—This article is a general provision, applicable to matters for which provision is not made in the main body of the Act, or in Sch. II. It provides for all suits and appeals in which *ad valorem* Court-fee is payable. In *Ragobir Singh* v. *Dharam Kaur*,[8] it was observed by Stuart, C.J., that these words "refer to plaints and memoranda of appeals mentioned in Sch. II of the Act." Similarly, in *Sekharan* v. *Eacharan*,[9] the Madras High Court, held that this article is a general article applicable to cases "not falling under any other article of the first or second schedules, as it is those schedules which indicate the fee." As Mullick, J., points out in *Krishna Mohan Singh* v. *Raghunandan Pandey*, the Patna Full Bench case,[10] the words "not otherwise provided for in this Act," refer to certain sections in the body of the Act and to the remaining articles of Schs. I and II. The PUNJAB CHIEF COURT, likewise holds that Art. 1, Sch. II, applies only to those cases which are not otherwise provided for under the Act.[11]

710. "**AMOUNT OR VALUE OF THE SUBJECT-MATTER IN DISPUTE**".—(1) General Rule. As a GENERAL RULE, the valuation once fixed by the plaintiff must be adhered to at subsequent stages of the suit, unless of course the identity of the subject-matter is different.[12] In in re *Garapati Butchi*, the Madras High Court held that the words "subject-matter in dispute" and its "value", in a suit falling under S. 7 (v) of the Act, for purposes of Art 1, Sch. I, meant the same thing as "the value of the subject-matter" as set out in the various sub-clauses of Cl. V, of S. 7.[13] The ALLAHABAD High Court lays down the rule that the value of the original suit, or the value assigned by the plaintiff in respect of the subject-matter of the suit, and not the value as found by the Court determines the proper appellate Court, unless it appears that, either purposely or through gross negligence, the true value has been altogether misrepresented by the plaintiff.[14] The NAGPUR Judicial Commissioner's Court, following the Allahabad view holds, that the value of a suit remains unchanged in all stages of

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(7) Reference under Court-Fees Act, 23 Mad. 84 [held that the appeal should be valued, as the suit was under S. 7 (v)]; also see Reference under Court-Fees Act, 29 Mad. 367 (S. 7 applies only to suits, and in appeals the Court-fee payable is under Art. 1, Sch. I on the subject-matter in dispute in appeal, and not in the suit).

(8) 3 All. 108 (F.B.).

(9) 20 M.L.J. 121.

(10) 4 Pat. 336.

(11) 61 P.R. 1919; 47 I.C. 992.

(12) *Samiya Mavali* v. *Muniammal*, 23 Mad. 490=10 M.L.J. 340=70 I.C. 392; and *Dhupato* v. *Perindevamma*, 33 I.C. 602=39 Mad. 725=30 M. L.J. 402.

(13) 85 I.C. 405=1925 Mad. 323=48 Mad. 652.

(14) *Madho Das* v. *Ramji Patak*, 16 All. 286 (1894); cited in *Muhammad Abdul Majid* v. *Ala Bux*, 86 I.C. 1055=47 All. 534; also see *Mahabir Singh* v. *Beharilal*, 13 All. 320=A.W.N. (1891) 107.

the *lis*, and determines the form of appeal.[15] The PUNJAB Chief Court,[16] and the CALCUTTA High Court, have inclined towards the same view.[17] The SINDH Judicial Commissioner's Court seems to follow the Madras view as noted above.[18] And, the RANGOON High Court also lays down the principle that for purposes of Court-fee the value of the appeal is the same as that of the suit.[19] But, this general rule is applicable only when the relief sought in appeal is identical with the relief sought in the original suit, and the subject-matter of the suit and appeal is the same.[20] Where the subject-matter is not identical, the Court-fee payable on a memorandum of appeal is determined by the value of the subject-matter of appeal,[21] *viz.*, the value of the relief granted by the decree which the appellant wishes to get rid of;[22] or, which is the value of the relief claimed by him in appeal.[23] Thus, the Court-fees in appeal cases is payable on the value of the subject-matter in dispute in the appeal, and not of the subject-matter in dispute in the suit.[24]

711. EXCEPTIONS TO THE GENERAL RULE.—(1) Change in nature of relief. The value of an appeal is not in all cases the value of the suit as originally filed, as the value of the relief granted by the decree which a party wishes to get rid of, or the value of the relief, whole or part, as claimed in appeal, is not necessarily the same, as in the Original Court. For instance, where the subject-matter of appeal is not co-extensive, the Court-fee payable on appeal is *ad valorem* on the value of relief which appellant asks.[25] An appeal by attaching creditor against release of property in a claim suit requires a fixed Court-fee of Rs. 10; but, if the ostensible owner appeals, the Court-fee is *ad valorem*

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(15) *Chuni Lal* v. *Kishandas Ramdas*, 89 I.C. 407=1926 Nag. 71; also see *Dhiraj Singh* v. *Raja Ram*, 8 I.C. 1125=6 N.L.R. 164; and *Olpherts* v. *Arjundas*, 20 I.C. 928=9 N.L.R. 122; compare, *Surendra Narain* v. *Hafijul Rehman*, 30 I.C. 379 (Court-fee on value found by trial Court); also see and *cf.* 110 I.C. 631=9 Lah. 23=1928 Lah. 157 (1). (Valuation as formed by Court, in a suit for account, and not plaintiff's approximate valuation taken).

(16) *Kanjimal* v. *Panna Lal*, 7 P.R. 1915=28 I.C. 262.

(17) *Banwari Lal* v. *Sheo Shanker*, 1 I.C. 670=13 C.W.N. 815.

(18) *Mahomed Rahwoo* v. *Ibrahim Jangji*, 98 I.C. 909=1927 Sind 100=21 S.L.R. 377; also see *Motiomal* v. *Molapbai*, 79 I.C. 923.

(19) *Abdul Rahman* v. *Crisp*, 1930 Rang. 164.

(20) See F.-n. (18), *supra*.

(21) *Ibid.* 79 I.C. 923; and 98 I.C. 909=1927 Sind 100.

(22) In re *Parkodi Aohi*, 68 I.C. 444=1922 Mad. 211=45 Mad. 246; and in re *Tiruvangalath*, 92 I.C. 624=1926 Mad. 225; (plaintiff should pay Court-fee in proportion to the value of relief he seeks); also see *Mithoumal* v. *Bashomal*, 116 I.C. 110=1929 Sind 161.

(23) *Sohanlal* v. *Sardar Khan*, 32 I.C. 121.

(24) Reference under Court-Fees Act, 29 Mad. 367=16 M.L.J. 287; followed in *Mahadeo Prasad* v. *Gorakh Prasad*, 30 All. 547 (*Ad valorem* fee upon the total amount of the decree under appeal); also see *Lekh Ram* v. *Ramji Das*, 1 Lah. 234; and *Harlal* v. *Siri Ram*, 1931 Lah. 633.

(25) See comments under S. 7 (4) (*c*): Heading "Valuation in appeals", 57 I.C. 481=5 P.L.J. 455; and 48 I.C. 535=5 O.L.J. 663; also see 30 Mad. 96 (F.B.); and 8 I.C. 1145=37 Cal. 914; and 47 I.C. 311=16 A. L.J. 81; and 54 All. 347=140 I.C. 39=1932 All. 221.

calculated on the value of the property.[26] The nature of the relief sought may vary at the stage when appeal is preferred.[27]

(2) Claim reduced in appeal. Where the party appealing has abandoned a part of his claim, and the value of the relief sought in appeal is thereby reduced, in first appeal, or in second appeal, the Court-fee is payable upon the reduced claim, where it is permissible.[28]

(3) Conditional decree. Where the decree attaches a definite condition as to the relief granted, and the relief sought in appeal is the mere removal of the condition precedent, and there is no appeal against the decree, the general rule is not applicable.[29]

712. APPEAL AGAINST PART OF CLAIM DECREED.—(1) Partial decree. The general rule is that the fee is *ad valorem* under Art. 1, Sch. I, according to the nature of the relief sought in appeal. Consequently, when a claim is decreed in part, and the plaintiff appeals against the decree disallowing part of the claim, while the defendant appeals against the part claim decreed, the two appeals are for different reliefs arising out of the same decree; and each is valued separately on the value of the subject-matter in appeal. The Court-fees which an appellant has to pay on a memorandum of appeal from a decree which gives him only a partial relief are to be calculated upon the difference between the value of the relief which he claims and the relief granted by the decree against him.[30]

(2) Appeal against part affecting the whole. Where appeal against part of decree goes to the root of whole case, the appellate Court would be justified in refusing to hear such appellant on such ground as bar of limitation, or misjoinder, etc., unless he pays a Court-fee sufficient to cover the whole relief obtainable on such ground of appeal.[31] The defendant must appeal

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(26) 43 I.C. 971 Pat.

(27) 80 I.C. 563=3 Pat. 640=1924 Pat. 582; 68 I.C. 265 (267)=44 All. 629=1922 All. 358 (Appeal entitled against the decree as it stood); 131 I.C. 39=1931 All. 251 (prayer in appeal amounting to consequential relief); also see *Sangat Baksh Singh* v. *Dijdeo Singh*, 67 I.C. 968=25 O.C. 30=1922 Oudh 82 (Foreclosure and Redemption Suits).

(28) *Rajendra Prasad Bose* v. *Gopal Prosad Sen*, 115 I.C. 678=9 P. L.T. 613; also see 57 M.L.J. 357 (Claim reduced in appeal); also see *Chuni Lal* v. *Sheocharan Lal*, 89 I.C. 122=47 All. 756=1925 All. 787; *Karam Chand* v. *The Jullumdhar Bank*, 102 I.C. 705=1927 Lah. 543; and *Ram Chand* v. *Panna Lal*, 116 I.C. 82=1929 All. 308=27 A.L.J. 547; *Dhanukdhari* v. *Mani Sonar*, 6 Pat. 17=1927 Pat. 123 (second appeal on reduced claim; compare *Harbans Sahu* v. *Lalmani Kuer*, 62 I.C. 36=1922 Pat. 62 (value of suit cannot be reduced for first time in appeal); also see and *cf. Bhagwan Puri* v. *Secretary of State*, 100 I.C. 35=49 All. 398=1927 All. 308 (Defendant allowed to correct plaintiff's original estimate).

(29) *Tikkan Ram* v. *Bosa Ram*, 67 I.C. 106=1922 Lah. 440; *Wadhawa Singh* v. *Sundar Singh*, 59 I.C. 667 (1)=1921 Lah. 371; *Nepal Rai* v. *Debi Prasad*, 27 All. 447; compare, *Kishendutt* v. *Kasey Pandey*, 57 I.C. 481=5 P.L.J. 455 (appeal against conditional decree); also see and *cf. Rup Chand* v. *Fatteh Chand*, 33 All. 705 (Decree restricting possession).

(30) *Lukhun Chunder Ash* v. *Khoda Buksh Mondal*, 19 Cal. 272.

(31) *Dilawar Hussain* v. *Bhagwat Das*, 4 A.L.J. 130=1907 A.W.N. 63; *Bughawan Rai* v. *Makund Lal*, 15 All. 112=12 A.W.N. (1892) 248.

on the whole case, where the particular ground would involve the dismissal of the suit *in toto*.[32]

(3) Appeal against whole aiming against part. However, where an appeal against part involves higher Court-fee, a party may pretend to appeal against the whole decree while aiming really to obtain relief against a part thereof. For example, it is an anomaly of the law of Court-fees that a person who appeals against a pre-emption decree, for enhancement of the market value would have to pay more Court-fee than one who appeals against the whole of it, claiming the dismissal of suit; and, therefore, it is legitimate for a defendant-vendee-appellant, whose real object is to have the value enhanced, to avoid payment of Court-fees on a larger amount by resorting to the obvious trick of adding grounds for dismissal of the suit.[33]

713. **DISTINCT SUBJECT-MATTER.**—Where plaintiff having obtained a decree for money against defendant, the latter appealed for a declaration whether plaintiff alone was entitled to the money; and, further, for reduction of amount decreed alleging payments, the Court-fee payable was a fee of Rs. 10 for first relief, *plus* an *ad valorem* Court-fee on the second relief.[34]

714. **SEPARATE APPEALS.**—Where in a suit on mortgage, a money-decree was passed, and there were cross-appeals; and two second-appeals were filed by plaintiff-mortgagee, arising out of the same suit, the Court-fees had to be paid on each of them separately.[35] Where defendants, entitled to file a joint appeal appealed separately against the decree, a separate Court-fee had to be paid by each.[36] An appeal filed by one of several parties is required to be stamped *ad valorem* on the relief required by the particular appellant.[37]

715. **SEVERAL DEFENDANTS.**—Where a person whose claim has been decreed against one of several defendants, appeals with a view to obtain the decree against other defendants, Court-fee is payable *ad valorem* on original amount.[38] Similarly, where

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(32) *Hukam Singh* v. *Shahabdin*, 44 I.C. 890=14 P.W.R. 1918; citing *Akkaraju Narayana* v. *Seshamma*, 26 I.C. 33=27 M.L.J. 677.

(33) *Nazar Muhammad* v. *Kala Ram*, 1929 Lah. 190=9 Lah. 563: compare *Hazari Singh* v. *Piran*, 92 P.R. 1900 (Appeal by defendant-vendee for a sum of money disallowed, held correctly stamped at the Court-fee payable on the whole claim); also see *Harbbagwan* v. *Amar Singh*, 83 I.C. 332 =5 Lah. 137=1924 Lah. 530. Court-fee on claim dismissed in part, not to exceed Court-fee payable on dismissal of whole claim).

(34) *Kirpal Singh* v. *Sant Singh*, 13 I.C. 305.

(35) *Shib Dayal* v. *Meharban*, 58 I.C. 230=1921 All 395=43 All. 56= 18 A.L.J. 894.

(36) *Panna Lal* v. *Marwar Bank*, 48 I.C. 424 (428)=91 P.R. 1918.

(37) *Khale Khan* v. *Khair Din*, 10 Lah.L.T. 23.

(38) *Ramasami* v. *Subbasami*, 13 Mad. 508; and 12 C.P.L.R. 43; also see *Anna Narayan* v. *Madhyama*, 67 I.C. 364=1922 Bom. 172=46 Bom. 840; and *Amir Chand* v. *Kanhaya Ram*, 16 I.C. 777=86 P.R. 1912; followed in *Ram Kishan* v. *Hirde Ram*, 71 I.C. 737=1923 Lah. 135.

a person gets a decree for the amount claimed, but not against the property which he seeks to charge in appeal, the Court-fee is not Rs. 10, for a declaration merely, but *ad valorem* on the amount of the debt to be recovered from the property in question.[39] In view of the provisions of O. XLI, R. 4, Civil Procedure Code, the dismissal of the suit against all the defendants, though some of them alone had appealed, is not illegal.[40]

716. SEVERAL PROPERTIES.—Where a decree was passed declaring the liability of several properties separately for various specific sums, and one of the defendants appealed to exonerate his property from liability for the amount for which it was declared liable, the value of subject-matter in appeal was that amount and not the whole decree amount.[41]

717. VALUATION OF APPEALS.—The valuation of an appeal must be according to the law in force at the time of its presentation, and the original valuation under a law obsolete at the period of appeal cannot be maintained.[42] A memorandum of appeal dates from presentation to proper officer, and is liable to Court-fees leviable on that date.[43] But right of appeal to a higher Court depends on the value of suit on the date of the plaint, and is not taken away by amendment altering the Court-Fees.[44] In fixing the Court-fee payable on a memorandum of appeal, the appellate Court is not bound by the decision of the first Court.[45]

718. COURT-FEE ON PLAINTS.—Art. 1 of Sch. I of the Court-Fees Act applies only to those cases which are not otherwise provided for under the Act.[46] Consequently, in suits for money, falling under S. 7 (i) of the Act, Court-fee is payable according to the amount claimed, after deducting an amount of the loss sustained by the plaintiff on account of defendant's breach of contract.[47] An application is to be distinguished from a plaint in a suit.[48] Inasmuch as there is no particular provision in the Court-Fees Act applicable to a suit for assessment of fair and

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(39) *B. P. J.* 1894, p. 153.

(40) 98 I.C. 846=1927 Pat. 103.

(41) *Khale Khan* v. *Khair Din*, 10 Lah.L.T. 23.

(42) 5 M.H.C.R. App. 44 (Proceedings, dated 15th November, 1870).

(43) 71 I.C. 426=2 Pat. 264=1923 Pat. 150.

(44) 106 I.C. 616 (Mad.)=50 Mad. 857=1927 Mad. 977 (F.B.); also see 23 Mad. 99 (P.C.); 89 I.C. 407=1926 Nag. 71.

(45) 6 Bom. 302; 15 Bom. 82.

(46) *Byamad Din* v. *Delhi Flour Mills Company*, 47 I.C. 992=61 P. R. 1919.

(47) *Ibid.*

(48) 11 W.R. 90 (application under S. 25, Act X of 1859, for ejectment of a tenant, is not a suit); also see 10 Cal. 11=13 C.L.R. 171; and 70 P.R. 1881 (application to file an award, under Sch. II, para. 20, C. P. Code, is not a "plaint"); and 14 C.P.L.R. 100 (order absolute for foreclosure or sale, appeal against the order treated as an application under Sch. II, Art. 1).

equitable rent, Court-fee should be paid *ad valorem* under Sch. I of the Act.[49]

719. **REJECTION OF PLAINT OR MEMORANDUM OF APPEAL.**—The Court-Fees Act contains no definition of the word "*order*," or a "decree," but it must have meant to follow the definition of these words in the Code of Civil Procedure. An order rejecting a plaint is a "decree" for purposes of the Civil Procedure Code, and Sch. I, Art. 1, applies to a memorandum of appeal against such orders which "shall be deemed to be *decree*." The question what is the "subject-matter in dispute," and its value in such cases, is not free from difficulty. In *Durga Prasad* v. *Raghubar Dial*[50] the subject-matter in dispute in appeal was held to be the amount of stamp in dispute between the parties. The BOMBAY High Court holds that the appellant should pay the same amount of Court-fees which he paid on his plaint in the Court of first instance.[1] In the Calcutta case of *Amarta Lal Kumar* v. *Sisir Kumar Basu*, the same fee was paid on the memorandum of appeal to the High Court as was paid in the first Court.[2] The LAHORE High Court holds, that *ad valorem* Court-fee is payable, on a memorandum of appeal from the order rejecting the plaint for failure to make up the deficiency in Court-fee, amounting to a decree, and that it is appellant's duty to pay the fee at least on the valuation which he had himself placed upon his claim.[3] The NAGPUR Judicial Commissioner's Court, held in *Govinda* v. *Bansil*,[4] that the subject-matter in appeal from such an order being the correctness of lower Court's decision demanding additional Court-fees, or refusing to give time to comply with it, and the resultant rejection of the memorandum as insufficiently stamped, is incapable of being properly valued, and must, therefore, fall under the residuary Art. 17 of the second schedule of the Court-Fees Act. But, in a later ruling, in *Harikar Rao* v. *Salu Bai*, it was pointed out that it is a mistake to regard such an appeal as against the demand for further Court-fees, as it is really against the decree rejecting the plaint, and the fee should be *ad valorem* on the value of the subject-matter of the suit.[5] The PATNA High Court also holds that the memorandum of appeal against the decree must be stamped in the same way as the plaint.[6]

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(49) *Dhanukhdhari* v. *Mani Sonar*, 100 I.C. 913=6 Pat. 17=8 P.L.T. 366.

(50) (1882) 2 A.W.N. 244; *cf. Surendra Narain* v. *Hafijul Rehman*, 30 I.C. 378.

(1) *Raghunath* v. *Gangadhar Bhikaji*, 50 Bom. 60.

(2) 87 I.C. 651=1926 Cal. 427.

(3) *Shahu* v. *Bakri*, 1921 Lah. 43=3 L.L.J. 237=67 I.C. 901; also see *Mt. Sadakaur* v. *Buta Singh*, 80 P.R. 1914 (order not open to revision).

(4) 98 I.C. 663=1927 Nag. 100; also see *Dadnoo* v. *Somnath*, 10 I.C. 736=7 N.L.R. 41 (Rs. 10 only held payable under Art. 17 (vi) of Sch. II of the Act).

(5) 103 I.C. 268 (271)=10 N.L.J. 106=1927 Nag. 256.

(6) *Munshi Mahtom* v. *Lachman Lal*, 120 I.C. 765=1929 Pat. 615=10 P.L.T. 545.

720. **LAND ACQUISITION APPEALS.**—Section 8 of the Court-Fees Act provides a rule for the computation of the fee payable under the Act in a certain class of cases, and it assumes that there is a charging section imposing an *ad valorem* fee; and Art. 1, Sch. I, is the section which puts a charge upon plaint or memorandum of appeal not otherwise provided for in this Act.[7] Proceedings before the Court on a reference by the Collector under the Land Acquisition Act are not initiated by a plaint, and are not in the strict sense of the word a suit at all. The Court is asked to make an award, and the proceedings cannot be described to set aside an award within the meaning of the provisions of Art. 17 (4), Sch. II, of the Act; and Art. 1, Sch. I, must be applied, the Court-fees being payable in these appeals *ad valorem* on the difference between the sum awarded by the Court, and the sum which the appellant claims should have been awarded.[8] A decision on a reference under S. 30 being one on rights of contending parties is a decree within S. 2 (2), and is appealable under S. 96. In the case of an appeal, the Court-fee is to be charged under Art. 1, Sch. I, of the Court-Fees Act.[9]

721. **SET-OFF OR COUNTER-CLAIM.**—A written statement of his case, tendered by a party to a suit at any time before or at the first hearing of the suit is not liable to any Court-fee.[10] But Court-fee is payable in case of set-off pleaded in written statement, which should be the same as for a plaint in a suit for that amount.[11] Where the amount claimed by the defendant exceeds the amount of plaintiff's claim, he must pay *ad valorem* Court-fees on the entire sum claimed by him, and not merely on the difference between the two amounts to entitle him to have his claim enquired into, and determined in the trial of the suit.[12] The word counter-claim is nowhere used in the Code of Civil Procedure; but its dictionary sense is exactly the same as that of set-off.[13] The words "set-off" and "counter-claim" are not defined in the Court-Fees Act but they have a definite meaning attached to them. They refer to a cross-claim against the

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(7) In re *Anandalal Chakrabutty*, 1932 Cal. 346=35 C.W.N. 1103=59 Cal. 528=137 I.C. 469.

(8) *Special Collector* v. *Ko Zi Na*, 1928 Rang. 197=6 Rang. 281=110 I.C. 870.

(9) *Mahalinga* v. *Theetharappa*, 1929 Mad. 223=115 I.C. 345=56 M. L.J. 387.

(10) 5 Bom. 400=5 Ind. Jur. 650; also see *Bhagat Singh* v. *Devi Dial*, 85 P.R. 1908, (a plea of payment in a written statement is not liable to Court-fee, as not containing a set-off); also see *Muhammad Raza* v. *Kabwra Bib*, 15 I.C. 526.

(11) 8 All. 396=6 A.W.N. (1886) 159; followed in 13 Bom. 672; also see *Chenappa* v. *Raghunatha*, 15 Mad. 29.

(12) *Chakhan Lal* v. *Kanhaiya Lal*, 69 I.C. 921 (922)=1923 All. 118 =20 A.L.J. 1005=45 All. 218; compare *Ramangir* v. *Achheran*, 97 I.C. 916=1927 Nag. 714.

(13) *Sayakya* v. *Maung Kyaw Shuns*, 2 Rang. 276=1924 Rang. 346 (counter-claim was for specific performance of execution of a sale-deed); also see *Mahesh Narain* v. *Newhat Patuk*, 32 Cal. 654=1 C.L.J. 364 (For certain purposes the set-off has the same effect as a plaint in a cross suit).

plaintiff which entitles the defendant to refuse to pay the amount demanded by the plaintiff, and to assert that the result of setting off the cross-claim of the defendant would be that the defendant would on the contrary be entitled to a decree for the balance.[14] A set-off is a cross-debt on which a separate action may be sustained.[15] The set-off mentioned in this article is not confined to a legal set-off, and *prima facie* the expression "set-off" used in this article may well nigh include an equitable set-off also.[16] Accordingly, this Art. 1, Sch. I, was applied to a set-off claimed by defendant, by reason of damages due to breach of contract of sale, which led to the execution of pro-note in suit in favour of plaintiff.[17] But, in a suit for accounts and to recover money due on a dissolved partnership, the defendant's claim for decree on accounts, is not a counter-claim, and no Court-fee is leviable thereon. Until the amount has been ascertained[18] the Bombay High Court has held that if a cross-debt is due to the garnishee at the date of attachment, he has a right of equitable set-off which can be set up without payment of a Court-fee.[19] When a set-off is pleaded by defendant, Court-fee is payable only on the amount claimed in excess of that claimed by the plaintiff, and only if the defendant wants a decree for that excess.[20] A plea of set-off is quite distinct from the plea of payment, and should not be entertained until Court-fee with respect to it has been paid by the defendant in the Court of first instance.[21] Where a written statement pleading a set-off does not bear *ad valorem* Court-fees on the amount of set-off, the Court is debarred from going into the question of set-off.[22] The maximum Court-fee payable on a written statement pleading a set-off or counter-claim is that specified as maximum in the schedule.[23]

722. DEFENDANT'S CLAIM IN CERTAIN SUITS.—(i) PARTITION SUITS.—The defendant in a partition suit need not pay any Court-fee, in order to have his share separately allotted to him; he is merely to ask for it in his written statement, and a final decree in the suit has to be stamped as an instrument of partition under the Stamp Act, and except the stamp duty levied on the

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(14) *Wali Mahomed Shaloo* v. *Khoja Ismailia Trading Company*, 1933 Sind 247; also see *Bhagat Singh* v. *Devi Dial*, 85 P.R. 1908, to same effect.

(15) *Jeosa Ram* v. *Dhanu Ram*, 27 I.C. 320=8 S.L.R. 124.

(16) *Sitarama Ayyar* v. *Ramanuja Mudaliar*, 1933 Mad. 203=142 I.C. 719.

(17) *Ibid.* 1933 Mad. 203.

(18) *Fatehmahomed Haji Suleman* v. *Ramzan Khair*, 27 I.C. 316=8 S.L.R. 122; also see *Jessa Ram Dhanu Ram* v. *Isardas*, 27 I.C. 320=8 S.L.R. 124 (suit for partnership accounts).

(19) *Tayabali* v. *Atmaram Sakharam*, 25 I.C. 375=38 Bom. 631.

(20) *Ramangir* v. *Achheram*, 1927 Nag. 74=97 I.C. 916; *cf.* 67 I.C. 921 (922)=45 All. 218 (F.N 12, *ante*.).

(21) *Muhammad Raza* v. *Kubra Bibi*, 15 I.C. 526 (Oudh); also see *Katil Graham* v. *Colonial Government*, (1910) 12 C.L.J. 351 (deduction of repairs from rent).

(22) *Muthu Erulappa* v. *Vunuku*, 36 I.C. 957 (958)=10 Bur.L.T. 242.

(23) *Mahomed Mumtaz Ali* v. *Saadat Ali*, 5 Luck. 621=1930 Oudh 140=7 O.W.N. 147=125 I.C. 172.

decree no other duty is payable by the defendants.[24] As the defendant can get his share by paying stamp, no Court-fee is necessary on defendant's claim for a share in a partition suit.[25] Where the defendant is not putting forward any counter-claim, but is making various claims as to items in the particular account to be taken in the suit, he cannot be asked to pay Court-fees on these sums.[26]

(ii) PARTNERSHIP SUITS.—In a suit for accounts defendant can say that on accounts being gone into money would be due to him and that such decree be passed in his favour. He need not specify any particular sum nor pay any Court-fee.[27] In a suit for account, the defendant who is an accounting party makes no cross-claim, consequently his plea that the result of the account would be in his favour, and not in favour of the plaintiff requires no Court-fee on the written statement as a counter-claim[28] within the meaning of Art. 1, Sch. I, of the Act. A somewhat different view was taken in the Madras case of *Narasimha Rao* v. *Zemindar of Tiruvur*,[29] but that ruling has been dissented from in the recent case of *Annu Avathanigal* v. *Somasundara*,[30] which reviews the case law. A suit for an account is to be distinguished from a suit for compensation for breach of contract.[31]

(iii) ADMINISTRATION SUITS.—The CALCUTTA High Court holds that an administration suit, is a suit for account;[32] however, the MADRAS High Court has held that where a creditor brings such a claim, after a preliminary decree for administration, the analogy of the suit for account will not apply, consequently, failing the analogy of S. 11, of the Court-Fees Act, there is no specific provision for Court-fee in such cases, and a case of omission cannot be supplied by the Court, but by the Legislature.[33] Thus the Court has no power to call upon the other creditors to pay *ad valorem* Court-fee on the amount of their respective claims.[34] The LAHORE High Court holds that a suit for administration may

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(24) *Hem Chandra* v. *Prem Mahto*, 1926 Pat. 154=90 I.C. 739=7 P.L.T. 295; citing *Nawab Mir Sadruddin* v. *Nawab Nuruddin*, 29 Bom. 79=6 Bom.L.R. 834; *cf. Abdul Khadar* v. *Bajubbai*, 23 Bom. 188; and *Murar Rao* v. *Sitaram*, 23 Bom. 184 (not pure suits for partition).

(25) *Venkatasubbamma* v. *Ramanadhaya*, 1932 Mad. 722=139 I.C. 457 =55 Mad. 975.

(26) *Balgis Beevi Ammal* v. *Hathija*, 1933 Mad. 353 (1).

(27) *Wali Mahomed Shaloo* v. *Khoja Ismailia Trading Company*, 1933 Sind 247; also see 10 I.C. 250=163 P.L.R. 1911.

(28) *Ibid.* 1933 Sind 247; citing *Parmanand* v. *Jagatnarain*, 32 All. 525 =6 I.C. 163 (unnecessary for defendant to plead a set-off or counter-claim in such suits; and *Ram Charan* v. *Bulagi*, 83 I.C. 880=46 All. 858=1924 All. 854 (suit for accounts of a dissolved partnership).

(29) 1920 Mad. 819=53 I.C. 234=42 Mad. 873.

(30) 1931 Mad. 185=131 I.C. 165=54 Mad. 654.

(31) Also see 23 Cal. 884 (F.B.); 32 All. 525=6 I.C. 163; 83 I.C. 880=46 All. 858=1924 All. 854; and 14 Cal. 147=13 I.A. 123 (P.C.); *cf.* 53 I.C. 234=42 Mad. 873 (Privy Council ruling not referred).

(32) 44 Cal. 890=38 I.C. 835.

(33) 134 I.C. 1137 (1139, 1142)=1931 Mad. 683=55 Mad. 21=61 M. L.J. 933=34 L.W. 429=1931 M.W.N. 916.

(34) *Ibid.* 134 I.C. 1137=1931 Mad. 683=55 Mad. 21.

be against persons in possession of immoveable property, not as trespassers, but in their capacity as agents managers, liable to account for deceased's property.[35]

(iv) MORTGAGE SUITS.—Subsequent incumbrancers or persons deriving title from, or subrogated to the rights of, any such mortgagees may be joined as parties, under the provisions of O. 34, R. 4, sub-cl. (4). The right of second mortgagee in a suit for sale by first mortgagee is to redeem the first mortgage, or to receive his mortgage money out of the surplus sale proceeds after satisfaction of the earlier mortgage. He is thus entitled to treat the suit brought by the first mortgagee, as one for his benefit, and as a defendant to such suit, he need not pay any Court-fee. He may have to bring a separate suit for sale on his mortgage, however, in some cases.[36]

723. AWARDS, APPEALS IN CONNECTION WITH.—(1) AN APPLICATION TO FILE A PRIVATE AWARD, is not really a suit, though it is directed by para. 20 of Sch. II, Civil Procedure Code, to be numbered and registered as a suit, and, therefore, may have to be regarded as a suit for the purposes of the Civil Procedure Code.[37] An application under para. 20, is not a plaint in a suit as contemplated by the Civil Procedure Code[38] and Court-fee on an application to enforce a private award is as on an "application" under Court-Fees Act, Sch. II, Art. 1.[39]

(2) AN APPEAL AGAINST AN ORDER filing or refusing to file award, under para. 21 of the Sch. II, Civil Procedure Code, now lies under S. 104, Cl. (*f*), thus setting at rest a conflict of authorities, under the old Code, as to whether such an order was appealable as a decree.[40] As such appealable orders, not amounting to a decree, Court-fee will be payable under Sch. II, Art. 11, of the Court-Fees Act.

(3) But the right of appeal under S. 104, Cl. (*f*), is distinct from the right of APPEAL AGAINST THE DECREE passed in pursuance of the award. However, when the Court does not specifically pass an order allowing or disallowing the objections to an

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(35) 138 I.C. 335=1932 Lah. 328.

(36) *Sarat Chandra* v. *Nahapiet*, 37 Cal. 907=8 I.C. 1142; *Vedavyasa* v. *Madura H. S. Nidhi Company*, 42 Mad. 90=49 I.C. 36.

(37) 76 I.C. 493=1 Rang. 256=1923 Rang. 226 (not a suit for the purposes of Limitation Act); also see 38 All. 85 (91)=31 I.C. 899; 50 Bom. 263=95 I.C. 878=1926 Bom. 351; 83 I.C. 548 (2)=1924 Sind 23 (not a suit referred to in Deccan Agriculturists Relief Act).

(38) 59 I.C. 755=45 Bom. 329=1921 Bom. 389; 61 I.C. 390=1921 Pat. 161; 117 I.C. 94=1929 Lah. 533 (S. 10, C. P. Code is inapplicable); 89 I.C. 68=1925 Bom. 418 (O. 22, R. 9 inapplicable); 99 I.C. 178=1927 Sind 103 (Order 34, C. P. Code inapplicable); 1932 Lah. 374=137 I.C. 266=13 Lah. 672 (not a suit for purposes of S. 80, C. P. Code); also see 1930 Oudh 89=126 I.C. 508=5 Luck. 678.

(39) *Bijadhur* v. *Manohar*, 10 Cal. 11 (14); also see *Dharm Das* v. *Ajudhia Pershad*, 70 P.R. 1881.

(40) 27 Mad. 255 (258)=14 M.L.J. 356 (F.B.); 29 Mad. 303 (304); 2 I.C. 92 (93)=19 M.L.J. 394; 25 Cal. 757; 33 Cal. 11 (13); are no longer good law; compare 6 All. 186; 26 All. 205; 28 All. 21.

award, an appeal against the decree will be treated as an appeal against the order.[41]

(4) An appeal against the decree passed under para. 21 (2), Civil Procedure Code, questioning the legality of the decree as compared with the award, is "open to appeal" within the meaning of O. 43, R. 1 (*d*), and the memorandum of appeal would require an *ad valorem* Court-fee in accordance with Art. 1, Sch. I, of the Act.[42]

(5) An appeal from a decree based on an award filed through the intervention of Court must bear *ad valorem* Court-fee.[43]

(6) A suit to set aside an award, on a reference without the intervention of Court, is maintainable in the form of a suit for declaration that a certain award is null and void, falling under S. 39 of the specific Relief Act,[44] and is not opposed to S. 21 of that Act.[45] A fixed fee would be payable on plaints and memoranda of appeals in such suits, under Sch. II, Art. 17 (iv), and not an *ad valorem* fee under Art. 1, Sch. I, of the Act.[46]

(7) An appeal from order setting aside award of arbitrators, which amounted in law to a decree within the meaning of S. 2 (2), Civil Procedure Code, was held liable to Court-fee under Sch. II, Art. 17 (vi), of the Court-Fees Act, for the application under Sch. II, Art. 17, Civil Procedure Code, and the appeal embodied a prayer that cannot be valued in money.[47]

724. **APPEALS FROM ORDERS, HAVING THE FORCE OF A DECREE, UNDER CIVIL PROCEDURE CODE.** (1) The question of rejection of plaint, or memorandum of appeal, has already been dealt with under a separate paragraph. See above.

(2) An order passed under the provisions of O. 21, R. 50 (2), CIVIL PROCEDURE CODE, has the force of a decree; and *ad valorem* Court-fee on the value of the subject-matter in dispute must be paid on the memorandum of appeal.[48] An order refusing exe-

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(41) *Shamkar Das Nandlal* v. *Amerchand Lakshmidas*, 1925 Lah. 321 =88 I.C. 533=7 L.L.J. 91=26 P.L.R. 466; and *Ramdas* v. *Ram Sarup*, 118 I.C. 236=1929 All. 799; also see *Sitaramiah* v. *Pitchayya*, 12 I.C. 269 =21 M.L.J. 1005.

(42) *Hari Mohan Singh* v. *Kali Prosad*, 33 Cal. 11; (followed in 9 Bom. L.R. 259; and 1907 A.W.N. 177); also see 5 All. 333 (F.B.); *cf.* *Bhagat Ram* v. *Paras Ram*, 84 P.R. 1907 (Appeal from order rejecting an application to file award); also see *Gauri Shankar* v. *Anand Ram*, 94 I.C. 646=1926 Lah. 403 (Decree in terms of award, on a reference through Court).

(43) *Gauri Shankar* v. *Anant Ram*, 94 I.C. 646=1926 Lah. 403.

(44) 52 I.A. 265=89 I.C. 773=1925 P.C. 216 (P.C.).

(45) 47 Cal. 806; 50 Cal. 1=1922 P.C. 374 (P.C.); 56 I.C. 541 (Cal.); 128 I.C. 755=1930 All. 877; 45 Mad. 496=1922 P.C. 120=74 I.C. 616; 76 I.C. 953=1925 Sind 42; and 112 I.C. 318=1928 Sind 169.

(46) See Sch. II, Art. 17 (iv), *post*.

(47) *Jugul Kishore Gulab Singh* v. *Dinanath Siri Ram*, 1930 Lah. 825= 126 I.C. 562.

(48) *Ram Jowaya* v. *Devi Dittamal*, 117 P.R. 1916.

cution of a decree against an alleged partner of a firm against which the decree is passed, thus requires to be stamped under Art. 1, Sch. I, and is not governed by Sch. II, Art. 11 of the Act.[49]

(3) Where plaintiff was obstructed in execution of a decree by the defendant, whose claim was registered as a suit under S. 330 (ORDER 21, RULE 98), Civil Procedure Code, but the lower Court passed a decree in favour of the plaintiff, an appeal against the decree directing delivery of property in such suit ought to be stamped with an *ad valorem* fee under Art. 1, Sch. I.[50]

(4) AN ORDER IN PROCEEDINGS FOR RESTITUTION has been expressly declared to be a decree under S. 2 (ii), Civil Procedure Code,[1] and is appealable as such under S. 96, Civil Procedure Code. It was held in *Dino Nath Das* v. *Jogendra Nath*,[2] that inasmuch as the determination of a question under S. 144 is a decree, an appeal lies from an order purporting to be made under that section for the purpose of O. XXI, R. 18, Civil Procedure Code. There is no distinction between a decree made in a suit, and a decree made in proceedings under S. 144, Civil Procedure Code.[3] However, an order dismissing an application for restitution on a ground not touching the merits is not a decree which is appealable.[4]

The Court payable on a memorandum of appeal against an order under S. 144, Civil Procedure Code, depends upon the question whether the order is considered to be on an application under S. 47, for execution, discharge or satisfaction of the decree. If the order is considered to be one under S. 47, the Court-fee is limited to the amounts chargeable with a *fixed* fee under Art. II, Sch. II of the Act.[5] If not, it will be payable as on an appeal from a decree, *ad valorem* under Art. 1, Sch. I of the Court-Fees Act, on the amount dealt with by the order.[6]

725. DIVERGENCE OF VIEWS.—There is a DIVERGENCE OF VIEWS in the High Courts whether an order under S. 144, Civil Procedure Code, is to be considered to be one under S. 47, Civil Procedure Code, for the purposes of Court-fees.

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(49) *Valiappa Chetty* v. *Rungasawmy Naicker*, 35 I.C. 429=8 L.B.R. 300; followed in *Punjab National Bank* v. *Ranchore Das*, 127 I.C. 704=1930 Sind 255.

(50) *Balasundara* v. *Rajalingam*, 29 Mad. 172.

(1) See C. P. Code, S. 96; and S. 144, C. P. Code.

(2) 26 I.C. 890=19 C.W.N. 1167; also see *Arthanari* v. *Nagoji Rao*, 14 I.C. 836=1912 M.W.N. 513 (appeal lies against an order for restitution).

(3) *Adwaita Chandra Saha* v. *Chittagong Company, Ltd.*, 84 I.C. 747 =1925 Cal. 102=28 C.W.N. 988.

(4) *Sham Parshad* v. *Ramchand*, 10 P.R. 1914=20 I.C. 203; *Ramchand* v. *Sham Parshad*, 110 P.R. 1913=22 I.C. 851=117 P.L.R. 1914.

(5) See Government of India Notification No. 4650, dated 10th September, 1889 (*Gazette of India*, 1889, Part I, p. 506); also see Madras Government Notification No. 358, dated 11th October, 1921; and Bombay Government Notification No. 590, dated 22nd September, 1921; and U. P. Government Notification No. 560, vii—419, dated 3rd May, 1921.

(6) *Chitale's C. P. Code*, Vol. II, p. 1092.

i. The CALCUTTA High Court has held in *Madan Mohan Dey* v. *Nogendra Nath Dey*,[7] that an order under S. 144, Civil Procedure Code, is an order deciding a question falling under S. 47 (i) of the Code; and, therefore, an appeal to the High Court from such an order is chargeable with a Court-fee of Rs. 2, under Cl. (6) of the Notification of the Government of India, No. 4650, dated the 10th Septemper, 1889. The ruling in *Gangadhar* v. *Lachman Sing*, was followed, where an application for mesne profits made not by the plaintiffs but by the defendants against whom the suit had been dismissed, by way of restitution, was one under S. 244 (*c*), of the Code, and under the Government of India Notification would be chargeable with Court-fees under Art. 11, Sch. III, of the Court-Fees Act, and not *ad valorem*.

ii. The ALLAHABAD High Court has held that an order under S. 144, Civil Procedure Code, is not an order in execution falling under S. 47, Civil Procedure Code; and, therefore, the reduction of fee made in the case of appeals under S. 47, is not applicable to the case of appeals under S. 144, Civil Procedure Code.[8]

iii. The PATNA High Court followed the practice of Calcutta High Court, in the case of *Kamaruddin* v. *Basmal*,[9] but in the Full Bench case of *Balmukhand* v. *Basant Kumari*,[10] it was held by the majority (Ross, J., dissenting) that an application for restitution under S. 144, or S. 151 of the Civil Procedure Code, is not an application for execution, and the proper order of the Limitation Act applicable to such an application is Art. 181 of the first schedule of the Act. Ross, J. on the other hand held that Art. 182 of the Limitation Act aplied[11] This ruling was relied upon in the Allahabad case of *Baijnath Das* v. *Balmukand*.[12] But, the Patna High Court has held differently in the later case of *Sital Prasad Singh* v. *Jagdeo Singh*,[13] where the Calcutta view has again been followed, and the Court-fee in appeals from order relating to restitution was held payable under Art. 11, of Sch. II of the Act.

iv. The LAHORE High Court has similarly not been consistent. In *Moti Singh* v. *Harbhajan Singh*,[14] it was observed that "the practice of this Court so far has been to have such appeals on

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(7) 39 I.C. 640=21 C.W.N. 544.

(8) *Jiwa Ram* v. *Nand Ram*, 66 I.C. 144=44 All. 407=1922 All. 223 =20 A.L.J. 226; *Brijlal* v. *Damodar Das*, 66 I.C. 545=20 A.L.J. 456= 1922 All. 238=44 All. 238=44 All. 555; cited and followed in *Baijnath Das* v. *Balmukand*, 82 I.C. 321=47 All. 98; *cf. Gopal Prasad* v. *Ramdevi*, 63 I.C. 513=19 A.L.J. 711 (not followed in 47 All. 98).

(9) *Kamaruddin* v. *Thakur Basmal*, (1916) 1 P.L.W. 150.

(10) 78 I.C. 200=1925 Pat. 1=3 Pat. 371=5 P.L.T. 145=1924 P. H.C.C. 33 (F.B.).

(11) *Ibid.* 78 I.C. 200 (208).

(12) 47 All. 98, *supra*. (F.N. 8).

(13) 92 I.C. 474=4 Pat. 294=1925 Pat. 577=7 P.L.T. 415 (the application under S. 144 is one in discharge of the appellate decree).

(14) 1927 Lah. 635=103 I.C. 657.

a Court-fee stamp of Rs. 4,'' but the matter was ''not free from doubt.'' But, in *Gul Muhammad* v. *Sabzalikhan*, it was held that an order of restitution under S. 144, Civil Procedure Code, if such order is not contained in the decree of the appellate Court is an order which has the force of a decree and the Court-fee payable on an appeal from such an order is *ad valorem* under Art. 1, Sch. I, Court-Fees Act.[15] However, appeals from orders under S. 47, Civil Procedure Code, need not bear *ad valorem* Court-fees for, though such orders have the force of decrees they have been excepted from the provisions of Art. 1, Sch. I, Court-Fees Act by a Government notification.[16]

v. The MADRAS High Court held in *Sudalimuthu Pillai* v. *Sudalimuthu Pillai*, that applications in restitution under S. 144, Civil Procedure Code, are applications in execution, differing from the Allahabad view and relying upon the Calcutta rulings.[17]

vi. The NAGPUR Judicial Commissioner's Court, has held, in *Gabba* v. *Kanchhedilal*,[18] that an application for compensation by a judgment-debtor under S. 144, Civil Procedure Code, relates to the execution, discharge or satisfaction of the decree and the Court-fee payable on the memorandum of first appeal against an order on the application is 8 annas.

vii. The RANGOON High Court, follows the Allahabad view, and dissents from the Calcutta decision in *Madan Mohan* v. *Nagendra Nath*.[19]

The result is that all the High Courts, except Allahabad, Rangoon, Patna and Lahore High Courts, agree that an order under S. 144 will be considered to be one under S. 47 for the purposes of Court-fees.

726. CONDITIONAL DECREES.—Where a decree is obtained, subject to the condition of payment by plaintiff, of a certain amount or, of discharge of a liability, the plaintiff-appellant, praying for the removal of the condition must pay Court-fee *ad valorem* on the amount directed by the decree to be paid by him. But where the *defendant* is ordered to pay a certain amount, the plaintiff-appellant need not pay Court-fee higher than what was payable upon the plaint. It would make some difference

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(15) 1930 Lah. 24 (25)=113 I.C. 270 (271, 272).

(16) *Ibid.* 113 I.C. 270 (272).

(17) 71 I.C. 173=1923 Mad. 270 (citing *Somasundaram* v. *Chokkalinga*, 38 I.C. 806=40 Mad. 780=5 L.W. 267; *Annamalai* v. *Muthan*, 42 I.C. 530=33 M.L.J. 413=1917 M.W.N. 643=22 M.L.T. 333; and *Kurgodi* v. *Ningangauda*, 13 I.C. 179=22 M.L.J. 146); also see *Madan Mohan* v. *Nagendra Nath*, 39 I.C. 640=21 C.W.N. 544.

(18) 67 I.C. 225=1922 Nag. 62.

(19) 126 I.C. 211=8 Rang. 271=1930 Rang. 241; citing *Asha Bibi* v. *Nuruddin*, 30 I.C. 680=8 L.B.R. 262=8 Bur.L.T. 165; and 66 I.C. 144=44 All. 407=1922 All. 223=20 A.L.J. 226; and 66 I.C. 545=44 All. 555=20 A.L.J. 456=1922 All. 238; also see 78 I.C. 200=3 Pat. 371 =5 P.L.T. 145=1924 Pat. 33; and 82 I.C. 321=47 All. 98=22 A.L.J. 881=1925 All. 137.

where the decree itself provides that, in default of payment ordered, the decree shall became null and void.

Illustrations.

(1) A decree awards possession on condition that the plaintiff to pay all the encumbrances on the property;[20] or to pay a certain sum which he disputes;[21] or where a suit for possession is decreed conditional upon plaintiff discharging a certain liability.[22] In such cases the memorandum of appeal should be stamped *ad valorem* on the amount the plaintiff was ordered to pay.

(2) A plaintiff sues as reversioner, and in the alternative prays for redemption, which latter relief is granted on payment of a certain sum; but the plaintiff appeals on the ground that he is not liable to pay any sum. Court-fee is payable *ad valorem* on the amount he was ordered to pay.[23]

(3) A plaintiff-mortgagee sues for possession, and the claim is decreed, but the defendant is ordered to pay a certain amount on redemption. The plaintiff-appellant need pay Court-fee calculated *ad valorem* as on the plaint.[24]

(4) Where the plaintiff does not object to the decree but the decree provides that in default of a payment ordered, the decree shall become null and void; the appellant objecting to the condition annexed, must pay on the amount decreed.[25]

(5) Court-fee on appeal is *ad valorem*, in an appeal praying for money decree recoverable from property in possession of defendants.[26]

(6) Where a part of certain property was held liable to a mortgage-debt, the defendant appealing on ground that the property is not liable to be sold in execution of the mortgage-decree, should pay *ad valorem* Court-fee on the amount of charge.[27]

(7) Where the order under appeal was that failing satisfaction of the decree from first property, the second property be sold, the memo. of appeal required Court-fee of Rs. 10 *plus ad valorem* Court-fee on the amount disallowed.[28]

(8) Where a decree for possession is limited to the lifetime of the alienor, the plaintiff appealing for removal of the condition was required to pay a Court-fee of Rs. 10, not *ad valorem* Court-fee.[29]

(9) Where plaintiff's suit for possession of certain family property alienated by manager of a Hindu joint family is decreed subject to the payment by plaintiff of a certain sum to the defendant-alienee, the plaintiff-appellant was only required to value the appeal as in the suit, but an appeal against money ordered to be paid required Court-fee on the amount sought to be reduced.[30]

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(20) *Kishun Dutt* v. *Kasi Pandey*, 57 I.C. 481.

(21) *Basudeo Ram* v. *Sri Krishnagir*, 5 I.C. 941=13 O.C. 62 (Diss. from 2 I.C. 836=12 O.C. 133); also see *Wadhawa Singh* v. *Sunder Singh*, 59 I.C. 667=21 P.L.R. 1921; followed in *Tikkan Ram* v. *Bosa Ram*, 67 I.C. 106.

(22) In re *Porkodi Achi*, 45 Mad. 246=68 I.C. 444=1922 Mad. 211; *Balkishandas* v. *Mt. Jendo*, 108 I.C. 370=10 L.L.J. 55.

(23) *Mata Badal Singh* v. *Jai Singh*, 15 I.C. 746.

(24) *Raghashah* v. *Wajib Ali*, 50 I.C. 353.

(25) *Pirbhu* v. *Sandagar*, 33 P.R. 1884 (F.B.).

(26) *Tharumal* v. *Chandu Ram*, 11 P.R. 1916.

(27) *Sheoraja* v. *Debi Din*, 48 I.C. 535 (536)=5 O.L.J. 663.

(28) *Ujagar Lal* v. *Mohan Kuar*, 6 A.W.N. 312.

(29) *Rup Chand* v. *Fateh Chand*, 8 A.L.J. 821.

(30) In re *Ganpati Butchi*, 85 I.C. 405=48 Mad. 652=1925 Mad. 323.

(10) In a suit for declaration, where the decree is passed subject to payment of a certain sum, or that a certain portion of the consideration for the alienation would constitute a valid charge on the property, the Court-fee payable on second appeal against the declaration of a charge, is the fixed Court-fee for declaratory relief, and not an *ad valorem* Court-fee on the sum which had been held to constitute a valid charge on the property by lower appellate Court.[31]

727. COSTS, APPEAL AGAINST ORDER AS TO.—Costs of suit are not added to decretal amount for purpose of valuation of subject-matter,[32] as they are no part of the subject-matter in dispute.[33] Costs incident to all suits shall be in the discretion of the Court, and hence ordinarily Court-fee is not to be paid on the amount of costs allowed or disallowed.[34] But, where in a memorandum of appeal the disallowance of costs by the lower Court is made the ground of a claim for separate and distinct relief, the value of such distinct relief should be reckoned as part of the subject-matter in dispute for the purposes of Sch. I of the Court-Fees Act.[35] The rule with regard to paying Court-fees upon costs has been stated to be this,

"That ordinarily Court-fees are not payable upon costs entered in the decree against which an appeal is presented; but where apart from and independently of any other relief which an appellant seeks in an appeal from a decree, he seeks distinct relief on the ground that by the decree under appeal the costs of the parties have not been properly assessed or apportioned, the value of such distinct relief should be reckoned as part of the subject-matter in dispute for the purposes of the first schedule to the Court-Fees Act."[36]

When an appeal against costs is distinct and separate from the other parts of the appeal, Court-fee must be paid *ad valorem* on the costs decreed.[37] In appeals against decrees from partition suits, the Court-fee payable is under Art. 17 (vi), Sch. II of the Court-Fees Act, and the same Court-fee is payable when the ground of attack is the question of costs.[38]

(2) A CROSS-OBJECTION RELATING TO COSTS should bear *ad valorem* Court-fees upon the amount claimed;[39] as under Art. 1, Sch. I, a cross-objector must pay an *ad valorem* fee according to the

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(31) *Harbhagwan* v. *Amar Singh*, 83 I.C. 332=1924 Lah. 530=5 Lah. 137.

(32) *Doorga Das* v. *Ramnauth*, 8 M.I.A. 262.

(33) *Nilmadhab Das* v. *Bishumbar Dass*, 13 M.I.A. 85: reld. in 19 Mad. 350 (352).

(34) *Vali Ram* v. *Karachi Bank*, 1927 Sind 251=104 I.C. 391=23 S. L.R. 277.

(35) *Debendro Mohan Rai* v. *Sona Kuer*, 26 All. 291=1901 A.W.N. 21.

(36) *Baldeo Prasad* v. *Inayet Khan*, 6 O.C. 135 (138, 139), cited in *Kewal Singh* v. *Makrund Singh*, 3 I.C. 584=12 O.C. 171; also see In re *Makhi*, 19 Mad. 350=4 M.L.J. 148.

(37) *Rowlins* v. *Lachmi Narain Jha*, 44 I.C. 50 (Pat.)=3 P.L.J. 443 =1918 Pat. C.W.N. 264.

(38) *Jyoti Prosad* v. *Jogendra Ram*, 116 I.C. 383=56 Cal. 188=1928 Cal. 878=32 C.W.N. 1105.

(39) *Kamakhya Narain Singh* v. *Ramraj Singh*, 117 I.C. 166=10 P. L.T. 224=1929 Pat. 286=8 Pat. 543.

value or the amount of the subject-matter in dispute.[40] A contrary view has been taken in the CALCUTTA HIGH COURT,[41] following the Privy Council decision in the case of *Doorga Das* v. *Ramnauth*,[42] but as pointed out by the RANGOON High Court, in the case of *Ma Shin* v. *Maung Shwe*,[43] the Privy Council decision was for a limited purpose of an appeal under S. 110, Civil Procedure Code, and does not in any way indicate that the costs of a suit cannot be considered to be the "subject-matter in dispute" under Sch. I, Art. 1 of the Court-Fees Act. The ALLAHABAD High Court has, on a review of the authorities come to the same conclusion, that cross-objections relating partly to costs and partly to other matters are governed by Art. 1, Sch. I of the Act. The part relating to costs must be held to be part of the subject-matter in dispute.[44] The LAHORE High Court has also expressly dissented from the Calcutta ruling.[45] This view is thus supported by the practice in the High Courts of Allahabad, Lahore, Madras, Patna and Rangoon High Courts, and also Oudh Commissioner's Court, but is not followed in the Calcutta High Court.

728. **CROSS-OBJECTIONS**—(1) AD VALOREM COURT-FEE.—Cross-objections should be stamped with AD VALOREM COURT-FEE under Sch. I, Art 1.[46] A respondent who files a memo. of cross-objections cannot avoid paying Court-fees simply because the appellant[47] has paid more fee than he is expected to pay. A cross-objection is liable to *ad valorem* Court-fee even in a suit for declaration falling under Sch. II, Art. 17, if it has not been filed as a regular appeal, for the words "cross-objections" have been deliberately omitted from Art. 17, Sch. II, of the Act.[48]

(2) VALUATION OF SUBJECT-MATTER.—The valuation or amount of the subject-matter in dispute, in the case of a revenue-

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(40) *Lakhan Singh* v. *Ram Kishendas*, 43 I.C. 179=40 All. 93=5 A. L.J. 886; also see *Maghim* v. *Maung Shew Hint*, 2 Rang. 637=85 I.C. 257=1925 Rang. 145; *Nihal Chand* v. *Amar Nath*, 98 I.C. 272=1926 Lah. 645; *Babaji Hari*, 4 Bom. 75.

(41) *Kamal Kamini Debi* v. *Muhammad Eman Uddin*, 64 I.C. 606=25 C.W.N. 934 (Rs. 2 stamp charged).

(42) 8 M.I.A. 262 (F.N. 32, *supra.*).

(43) 85 I.C. 257=3 Bur.L.J. 279=2 Rang. 637=1925 Rang. 145.

(44) *Chiranji Lal* v. *Bool Chand*, 1930 All. 832 (2)=128 I.C. 780=1930 A.L.J. 1097; citing (26 All. 291) and 19 Mad. 350; diss. from 64 I.C. 606; Ref. 1926 Lah. 645; 1925 Rang. 145; 1929 Pat. 286.

(45) *Nibal Chand* v. *Amarnath*, 98 I.C. 272=1926 Lah. 645.

(46) *Lakhan Singh* v. *Ram Kishendas*, 40 All. 93=43 I.C. 179=15 A.L.J. 886; *Ishdat Tewari* v. *Taneshwar*, 45 All. 537=83 I.C. 780=1924 All. 175; *Secretary of State* v. *Digambar Nande*, 46 Cal. 160=45 I.C. 939 =27 C.L.J. 443; *Rajdeo Lochan* v. *Mahant Ram*, 1923 Oudh 44=70 I.C. 286; *Daroga Rait* v. *Parem Kuer*, 45 I.C. 568=3 P.L.J. 197; also see *Amin Saheb* v. *Masbuddin* (cross-objections must be stamped upon the same footing as an appeal, 40 Bom. 541=37 I.C. 186.

(47) *Secretary of State* v. *Digambar Nand*, 45 I.C. 939=46 Cal. 160 =27 C.L.J. 443.

(48) *Daroga Raut* v. *Paremakuer*, 45 I.C. 568=3 P.L.J. 197 (Court-fee on value of subject-matter); also see *Syed Wasi Ali* v. *Jang Bahadur*, 18 O.C. 121.

paying land is to be calculated according to the jurisdictional value of the cross-objections, and not in accordance with S. 7, Cl. (v) of the Act.[49] Where the value cannot be estimated, the valuation placed on the cross-objections by the party presenting the same must be accepted if such valuation is not unreasonable.[50] In Madras, cross-objections claiming possession of immoveable property filed in appeals under Sch. II, Art. 11, or Art. 17 of the Court-Fees Act stand in the same position as memoranda of appeals for purposes of Court-Fees Act. (*Vide* Amending Act of 1922, S. 2):

(3) CONDITIONAL DECREE.—If the cross-objection seeks to remove a condition from the decree, it requires *ad valorem* Court-fee on the amount ordered to be paid by the decree.[1]

(4) MORTGAGE-SUITS.—Where the object of a cross-objection is to have a declaration in respect to a mortgage set aside, the proper value of the cross-objection, for the purpose of Court-fees, is the value of the mortgage.[2] Where the appellant, or respondent by way of cross-objections, while accepting the correctness of the amount found due, objects to the decree excluding from liability a portion of certain property, Court-fees should be paid with reference to the value of the property sought to be rendered liable when such value is less than the amount decreed,[3] and with reference to such decree amount when such value exceeds the amount decreed.[4]

(5) REDEMPTION-SUITS.—In cases of cross-objections relating to redemption or foreclosure suits, valuation is the difference of the value of the claim, and the amount decreed by the lower Court. For instance, where in an appeal by a mortgagee against a decree passed in a suit for redemption, the mortgagor files cross-objections for reduction of the amount payable for redemption, he must pay *ad valorem* Court-fee on the sum by which he seeks to have the amount reduced.[5] The Full Bench of the Allahabad High Court, has held that in the case of appeals or cross-objections in suits for redemption or foreclosure, in all cases in which the amount declared by the Court to be due at the date of the decree can be ascertained by reference to the judgment and the decree, it is that

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(49) 43 I.C. 179=40 All. 93, *supra*; (Court-fee payable in cross-objections in a partition suit); *Ishdatt Tewari* v. *Taneshar Tewari*, 83 I.C. 780=45 All. 537=1924 All. 175; followed in *Bishen Sahai* v. *Chhotey Lal*, 85 I.C. 270=47 All. 89=1925 All. 119=22 A.L.J. 911 (cross-objections claiming possession of immoveable property).

(50) *Rajdeo Lochan* v. *Ram Manohar*, 70 I.C. 286 (1)=1923 Oudh.

(1) *Ishdat* v. *Taneshwar*, 45 All. 537=1924 All. 175=83 I.C. 780.

(2) *Satdeo Narain* v. *Ramayan Tewari*, 52 I.C. 1002.

(3) *Kachera* v. *Kharag Singh*, 33 All. 20=7 I.C. 315=7 A.L.J. 342. 44=25 O.C. 275.

(4) *Kesavarapu* v. *Kotta Kota Reddi*, 30 Mad. 96=16 M.L.J. 458 (F.B.).

(5) *Mansa Ram* v. *Umra*, 11 I.C. 198=134 P.W.R. 1911=213 P.W. R. 1911.

amount at which the appeal or cross-objections should be valued, and future interest should not be taken into account.[6]

(6) MEMO. OF OBJECTIONS—NO COURT-FEE.—Where the cross-objections filed are merely objections to the findings of the lower Court on a particular issue, and the respondent is not questioning, but supporting the decree of the lower Court, a Court-fee of annas eight is held sufficient.[7] A petition in the appellate Court stating the grounds on which the respondent supports the decree does not amount to cross-objections for which an *ad valorem* Court-fee would be payable.[8]

A memorandum of objections filed under O. 41, R. 26, Civil Procedure Code, is neither an application, nor a petition presented to the Court, and consequently no Court-fee is chargeable upon it.[9]

(7) SUITS BY RYOTS TO SET ASIDE DISTRAINT PROCEEDINGS.—Where suits were instituted by ryots, under S. 95 of the Madras Estates Land Act to set aside distraint proceedings, and appeals were filed in which no grounds were taken which went to impugn the distraint proceedings *in toto*, but the objections were confined to the question of the amounts of rent due, it was held that the subject-matter of the appeals was capable of being estimated in money-value within the meaning of Sch. II, Cl. 17-B of the Court-Fees Act, and consequently the Court-fee payable in respect of the same was not the fixed fee of Rs. 15, but an *ad valorem* fee on the value of each of the memoranda.[10]

(8) CROSS-OBJECTION AS TO COSTS.—See p. 595, *ante* where authorities holding that a memorandum of cross-objections as to costs only must be stamped *ad valorem* for the amount of costs claimed, are collected.[11]

729. SUITS FOR ACCOUNT, APPEALS IN.—In suits for partnership accounts, their Lordships of the PRIVY COUNCIL have held that a memorandum of appeal should state in terms of the Act,

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(6) *Raghubir Prosad* v. *Shankar Bahsh*, 36 All. 40=21 I.C. 723=11 A.L.J. 1016 (F.B.); followed in *Thakur Nirman Singh* v. *Shyam Narain*, 1930 Oudh 329=7 O.W.N. 209=127 I.C. 32.

(7) *Bhajan Lal* v. *Chahat Rai*, 39 I.C. 176=15 A.L.J. 325; *Sahdeo Narain* v. *Kusum Kumari*, 1 Pat. 258=1922 Pat. 483 (2) (Petition criticising judgment).

(8) *Ram Prasad Kalwar* v. *Ajanasia*, 68 I.C. 861=1922 All. 280 (1) =44 All. 577.

(9) *Mohammad Sahimullah* v. *Khalilul Rahman*, 140 I.C. 47=1932 All. 526=54 All. 465; followed *Damodar Prasad* v. *Masudan Singh*, 105 I.C. 108=1928 Pat. 85.

(10) *Maharaja of Pittapuram* v. *Sri Chelikani*, 122 I.C. 526=57 M.L.J. 260=30 L.W. 357=1929 M.W.N. 608=1930 Mad. 22.

(11) *Kamakhya Narain Singh* v. *Ramraj Singh*, 117 I.C. 166=1929 Pat. 286=8 Pat. 543; *Ma Shin* v. *Maung Shwe Hnit*, 2 Rang. 637=1925 Rang. 145=85 I.C. 257; *Nihal Chand* v. *Amarnath*, 98 I.C. 272=1926 Lah. 645=8 L.L.J. 434; *Lakhan Singh* v. *Ram Kishendas*, 43 I.C. 179=40 All. 93=5 A.L.J. 886; *Chiranji Lal* v. *Bool Chand*, 1930 All. 832 (2) =128 I.C. 780=1930 A.L.J. 1097; compare *Kamal Kamari Debi* v. *Rangpare North Bank*, 64 I.C. 606=25 C.W.N. 934.

the amount at which relief is sought. This determines appeal. If plaintiff's suit is dismissed, and defendant's claim decreed in a suit for account, the plaintiff putting value on latter amount is not under-valuing, or splitting the claim in appeal, which may be tentatively fixed by plaintiff-appellant. The Court may give time for payment of extra Court-fee stamp, or defer the question till the result of appeal.[12]

730. The defendant appealing against a preliminary decree passed against him in a suit for accounts is entitled to put his own valuation on the memorandum of appeal and to pay Court-fees on that valuation, and is not bound to accept the valuation given by the plaintiff in his plaint.[13] However, the MADRAS FULL BENCH has held that the defendant appealing against the whole decree is bound by the valuation in the plaint, and cannot make a fresh valuation for purposes of the appeal,[14] and the SINDH JUDICIAL COMMISSIONER'S COURT follows the Madras view, that it is not open to an appellant, whether plaintiff or defendant to alter the valuation in case where the reliefs in the appeal, and in the suit are identical.[15]

731. In cases of appeals by the plaintiff, whose claim is nonsuited, the valuation is to be according to plaintiff's valuation in the plaint,[16] because a plaintiff cannot adopt a different value in appeal after dismissal of his suit. The value can only differ when the subject-matter of appeal is not co-extensive with the subject-matter of the suit.[17]

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(12) 10 Lah. 737, P.C.=1929 P.C. 147=56 Cal. 232=117 I.C. 493; but, see also and *cf.* 1933 Sind 322=116 I.C. 110=1929 Sind 161. (Court-fee *ad valorem* on the prayer for dismissal of defendant's appeal, *plus* a nominal fee in plaintiff's claim for decree in his own suit); also see 1933 Mad. 330=141 I.C. 602; and compare, 9 Rang. 165 (F.B.); holding that defendant-appellant is not bound by the plaintiff's valuation in suit. Also see 89 I.C. 122=47 All. 756=1925 All. 787; and 75 I.C. 871=4 P.L.T. 638, to same effect.

(13) *Thakur Das* v. *Daulat Ram*, 91 I.C. 32=1926 Lah. 189; and *Chuni Lal* v. *Sheo Charan Lal*, 47 All. 756=89 I.C. 122=1925 All. 787; and *Kanhaya Lal* v. *Ram Sarup*, 66 I.C. 841=44 All. 542=20 A.L.J. 416 =1922 All. 228; *Umar* v. *Ali Umar*, 1931 Rang. 146=133 I.C. 91=9 Rang. 165 (F.B.); also *Kuldip* v. *Harihar*, 75 I.C. 871=3 Pat. 146; *cf. Niamat Bai* v. *Thakur Daulat Ram*, 1933 Lah. 633.

(14) *Dhupati* v. *Perindevamma*, 33 I.C. 602=39 Mad. 725 (F.B.); followed in *Damodara* v. *Haribhandu*, 70 I.C. 392=1921 Mad. 406.

(15) *Mahomed Rahmoo* v. *Ibrahim Gangji*, 98 I.C. 908=1927 Sind 100; also see *Phulart and Coal Company* v. *Burrakar Coal Company*, 128 I.C. 795 =1930 Pat. 605=11 P.L.T. 629 (defendant to accept the valuation of plaintiff and pay Court-fees accordingly); and *Batna Ram* v. *Rahmatullah*, 1931 Lah. 143=131 I.C. 337=32 P.L.R. 62; *Pochalal* v. *Umedram*, 115 I.C. 391=52 Bom. 904 (followed the Madras Full Bench View); compare *Brij Raj* v. *Kishanlal*, 1933 Nag. 127=141 I.C. 277 (followed Allahabad ruling); also see and *cf.* In re *Nukala Venkatanandam*, 141 I.C. 602=1933 Mad. 330 (appellant in position of plaintiff in suits); and in re *Supputhayammal*, 1932 Mad. 453=62 M.L.J. 624 (*ad valorem* fee on excess amount in final decree).

(16) 98 I.C. 909=1927 Sind 100=21 S.L.R. 377, *supra*.

(17) 23 Mad. 490 (492); also see 1 I.C. 670; and 7 P.R. 1915; also 79 I.C. 923 Sind.

732. A memorandum of appeal from a preliminary decree in a suit for dissolution of partnership, which deals with certain items disallowed, and which bears a Court-fee of Rs. 10, is sufficiently stamped, as the question of disallowance is merely incidental to the main relief.[18] A memorandum of appeal from a final decree requires Court-fees *ad valorem* on the amount decreed, *i.e.*, finally ascertained as due to the plaintiff or defendant, on a rendition of accounts.[19]

733. APPEALS IN MONEY-SUITS.—(i) CLAIM FOR INTEREST.—The provisions of S. 7 apply equally to appeals as to original suits, according to the view of OUDH Commissioner's Court.[20] When plaintiff appeals against dismissal of his claim in a money suit, he is not required to pay any Court-fee on the amount of further interest during the pendency of suit. The claim for interest from date of suit until payment stands on the same footing as future mesne profits.[21] The Court-fee seems to be necessary according to the High Courts of Allahabad and Lahore, at least where the claim is for an ascertained sum as interest *pendente lite*.[22]

734. (ii) INSTALMENT DECREE.—Where a decree for money fixes instalments, and the decree-holder appeals against such fixation of instalments, Court-fees must be paid on the discount on the deferred instalments.[23] A decree passed in favour of plaintiff directing payment in instalments, is liable to Court-fee on the difference between the value of the reliefs claimed and that granted by the decree.[24]

735. (iii) SEVERAL DEFENDANTS.—Where in a suit for money against several persons, the plaintiff was given a decree against one of them only and the plaintiff appealed, on the ground that others should also have been held liable, an *ad valorem* Court-fee is payable on the amount of the decree.[25] Where the trial Court in a suit on a hypothecation bond passed a decree against one defendant only, and the plaintiff appealed with a view to make

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(18) *Ram Singh* v. *Ram Chand*, 57 I.C. 185=1 Lah. 6=19 P.L.R. 1920.

(19) 1933 Sind 322; 39 Mad. 725 (F.B.); 9 Lah. 23=110 I.C. 631; 34 Cal. 954 (F.B.); 20 Bom. 265; compare 39 I.C. 439=40 Mad. 1; 47 All. 534=86 I.C. 1055=1925 All. 376; also see 1929 Sind 161=116 I.C. 110 and 1929 Cal. 815=33 C.W.N. 743.

(20) *Sangat Baksh* v. *Dijdeo Baksh*, 67 I.C. 968 (969)=25 O.C. 30.

(21) 17 Bom. 41=1892 B. P. J. 16; also see 10 M.L.J. 144; and compare *Gobardhandas* v. *Narendar Bahadur*, 50 I.C. 798=22 O.C. 1 (*ad valorem* fee on amount of interest up till date of presentation of appeal); also see 103 I.C. 592=1927 Pat. 230.

(22) *Cf.* 52 All. 1029=1931 All. 351 (amount definitely ascertained); 1933 Lah. 941 [Court-fee *ad valorem* on the sum up to the date of appeal, or at least a Court-fee of Rs. 10 as provided by Art. 17 (6)].

(23) 24 I.C. 931=12 P.R. 1915; 19 Cal. 272; and 68 I.C. 444=45 Mad. 246.

(24) *Ibid.*

(25) 86 P.R. 1912; 16 I.C. 777; 1923 Lah. 135=71 I.C. 737.

the other defendant liable, it was held that Court-fee was payable *ad valorem* on the amount sought to be recovered.[26]

736. Interpleader Suit.—In an appeal from a decision in an interpleader suit in respect of money, the Court-fee payable is Rs. 10 under Art. 17 of Sch. II of the Act, and not a Court-fee *ad valorem* calculated according to S. 7 (4) (*c*).[27]

737. APPEALS IN MORTGAGE SUITS—Interest pendente lite.—Appeals in money suits on the basis of mortgages have to be valued for Court-fee on the principal and interest to date of suit.[28] No additional stamp is required on account of the claim for interest from the date of the institution of the suit until payment. It stands on the same footing as future mesne profits, which do not fall under S. 7 of the Court-Fees Act.[29] But, if any future interest is determined by the trial Court, and is entered in the decree, additional Court-fee should be paid on appeal on the sum of interest so added in the decree as having accrued from the date of the suit up to the date of the preparation of the decree in the lower Court;[30] similarly, from date of trial Court's decree up to date of lower appellate Court's decree.[31]

738. In a suit on a mortgage, if the amount decreed exceeds the amount claimed, the decree may be executed without payment of any additional Court-fee. Such a suit is not one for an account within the meaning of S. 11 of the Act.[32]

739. Exoneration of liability.—Where a person gets a decree charged on certain property from which exoneration of certain property is sought by the defendant, if the mortgage-debt is less than the value of the property, the value of the subject-

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(26) 13 Mad. 508 and 46 Bom. 840=67 I.C. 364.

(27) *Brij Narain* v. *Balmiki Pershad*, 61 I.C. 820=2 Pat.L.T. 280=1921 Pat. 305.

(28) *Bhawani Prasad* v. *Kutub-un-Nissa*, 27 All. 559 (Interest from date fixed by the decree for payment up to the date of realization Art. 17 (vi) applied); *Vithal Hari Athavale* v. *Govind Vasudeo*, 17 Bom. 41; 13 Mad. 308; *Kali Prasad Singh* v. *Mathera Prasad*, 77 I.C. 1054=1923 Pat. 28; *Jamuna Rai* v. *Ramtahall Raut*, 77 I.C. 1039=1 Pat. 19=1922 Pat. 387 (additional Court-fees payable on the amount of interest *pendente lite* awarded by the lower appellate Court); *Bhagwate Prasad* v. *Bishun Pragash*, 70 I.C. 953=1922 Pat. 386 (no Court-fee payable on interest from the date of grace up to the date of the hearing of appeal); compare *Damodar Pershad* v. *Hardeo Pershad*, 1931 All. 351=52 All. 1029=131 I.C. 253 (amount definitely ascertained); also see and *cf.* 1933 Lah. 941 (F.-n 22, above); and *Baldeo Singh* v. *Kalka Prasad*, 18 I.C. 365 (Amount declared due on date fixed for payment, included in value of subject-matter).

(29) 17 Bom. 41, *supra.*; followed in 70 I.C. 953=1922 Pat. 386, *supra.*

(30) 77 I.C. 1054=1923 Pat. 28; and 77 I.C. 1039=1 Pat. 19=1922 Pat. 387.

(31) *Rawlins* v. *Lachmi Narain*, 44 I.C. 50=3 Pat.L.J. 443=1918 Pat. 264.

(32) *Ram Bhujwan* v. *Natho Ram*, 70 I.C. 483=1922 Pat. 59.

matter in dispute on appeal is the amount of the charge; otherwise it is the value of the property sought to be charged with the decretal amount.[33] Where in a suit for redemption of usufructuary mortgage, the mortgagor appeals to avoid liability to pay a certain sum adjudged to be due to the mortgagee, he is liable to pay Court-fees on that amount, and not on the amount of the principal sum secured by the mortgage.[34]

740. Subject-matter in dispute in appeal.—In the case of appeals in mortgage suits, Art. 1, Sch. I of the Act applies; and the Court-fee in such cases is payable on the value of the subject-matter in dispute in the appeal, and not of the subject-matter in dispute in the suit.[35] Thus Court-fee on appeal by a defendant against a mortgage-decree is payable *ad valorem* on the amount awarded by decree inclusive of interest up to the date fixed for redemption.[36] In a foreclosure suit, where the appeal is for enhancement of mortgage-money, Court-fees is to be paid *ad valorem* on the amount by which the enhancement was sought.[37] Where the mortgagee appellant claims a larger amount than that awarded by the decree appealed against, Court-fees must be paid *ad valorem* on the amount claimed in excess.[38]

741. Order 34, Rule 3.—There is no difference in principle between a final decree for sale under, O. XXXIV, R. 4, Civil Procedure Code, and one for foreclosure under R. 3 of that Order, and any body desiring to appeal against a final decree for foreclosure must pay *ad valorem* Court-fees as in any other appeal from a final decree.[39] If any proceedings, which have terminated in a final decree under O. XXXIV, R. 3, are made the subject of an appeal, the appeal must be treated as an appeal from the decree and must be stamped accordingly and an *ad valorem* fee

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(33) 30 Mad. 96 (F.B.); also see 4 Mad. 339; and 10 Mad. 187; also see 1 I.C. 670=13 C.W.N. 815; 37 Cal. 914=8 I.C. 1145; 33 Cal. 1133; 11 C.W.N. 705=6 C.L.J. 427; also see 98 I.C. 807=5 Pat. 721=1927 Pat. 46; also see 33 All. 20=7 I.C. 315; also see 1933 All. 45=54 All. 553=136 I.C. 837 (market-value or decretal amount); 35 All. 92=11 A.L.J. 33=18 I.C. 577 (decree declaring separate liability of different properties); 11 P.R. 1916=33 I.C. 138; 111 I.C. 650=1928 Nag. 316; 7 Lah. 215=96 I.C. 473=1926 Lah. 408 (value of debt, or value of property whichever may be less, determines the value of relief); also see *Ujagar Mal* v. *Mohan Kuar*, (1886) 6 A.W.N. 312 (appeal against marshalling of securities); also see *Sarangapani* v. *Pichu Ayyar*, 1931 Mad. 710=135 I.C. 11; and *Sukhnandan* v. *Lachman Prasad*, 24 I.C. 286; and *Sheoraja* v. *Debidin*, 48 I.C. 535 (Mortgage-suit, exemption of property from liability).

(34) *Mardan Singh* v. *Sheoraj*, 30 I.C. 322.

(35) Reference under Court-Fees Act, 1870, 16 M.L.J. 287=29 Mad. 367.

(36) *Vali Ram* v. *Karachi Bank*, 104 I.C. 391=1927 Sind 251; also see *Baldeo Singh* v. *Kalka Parshad*, 18 I.C. 365=35 All. 94 (Amount due on date fixed for payment); *Husain Khanam* v. *Husain Khan*, 29 All. 471.

(37) *Wasudeo* v. *Daya Ram*, 29 I.C. 609=11 N.L.R. 83.

(38) *Sant Baksh Singh* v. *Dildar Hossein*, 74 I.C. 88=1924 Oudh 170; and *Sangat Baksh Singh* v. *Dijdeo Baksh*, 67 I.C. 968=1922 Oudh 82.

(39) *Balaji* v. *Ballabhdas*, 107 I.C. 671=1928 Nag. 146; also see (F.-n.) 26 below.

should be paid.[40] However, an appeal from an order refusing to extend time for payment of the amount due under a preliminary decree is chargeable with Court-fees payable for an appeal against an *order*, under O. XLIII, R. 1 (*a*), Civil Procedure Code, when there is no indication in the memorandum of appeal that it is an appeal from the final foreclosure decree.[41] But, an absolute decree for redemption, foreclosure or sale is clearly a final decree within the terms of the definition in Cl. (2) of S. 2 of the present Code of Civil Procedure (Act V of 1908); and an appeal against such a decree must, therefore be stamped as such, and not as a mere application. The Court-fee stamp is *ad valorem* on the amount of principal mortgage-money.[42]

742. Order 34, Rule 4.—The ALLAHABAD FULL BENCH has laid down the rule, that in all cases in which the amount declared by the Court to be due at the date of the decree can be ascertained by reference to the judgment and the decree, it is that amount at which the appeal, or cross-objections, should be valued, and future interest should not be taken into account.[43] Thus, the memorandum of appeal is not sufficiently stamped if it shows a Court-fee only on the principal and interest due up to the date of the institution of suit, excluding the interest allowed *pendente lite*.[44] In BOMBAY, it has been held that a claim for interest subsequent to the date of suit is on the same basis as a claim for further mesne profits, and is not liable to payment of Court-fee.[45] Different rules have been applied by different High Courts in appeals by the unsuccessful plaintiffs, *vide Gobardhan Das* v. *Narendra Bahadur Singh*;[46] *Percival* v. *Collector of Chittagong*,[47] *Prog* v. *Bhagwan Din*,[48] which support one view, and *Kali Prasad Singh* v. *Mathura Prasad*,[49] and the cases collected therein, which support another view.[50] As regards appeals by unsuccessful defendants, the SIND Judicial Commissioner's Court, differing from the Allahabad cases, has held that no distinction can be drawn between interest which has accrued due before the date of the decree and which is payable by the decree as part of the redemption money.[1] "If the decree fixes the amount of interest due up to the date of redemption, such interest forms as much part of the decree as any other sum awarded as interest; and, in the event of the decree not being challenged, the whole sum is payable

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(40) *Ram Dhani* v. *Maqbul Ahmad*, 30 I.C. 492=18 O.C. 114.
(41) *Manjlabai* v. *Swrajmal*, 111 I.C. 294 (295)=1928 Nag. 333.
(42) *Dadnoo* v. *Sannath*, 7 N.L.R. 41=10 I.C. 736; 1931 Nag. 1=130 I.C. 98 (F.B.).
(43) *Raghbir Prosad* v. *Shanker Bux Singh*, 21 I.C. 723=36 All. 40.
(44) *Baldeo Singh* v. *Kalka Prasad*, 18 I.C. 365=35 All. 94.
(45) *Vithal Hari Athavale* v. *Govind Vasudeo*, 17 Bom. 41.
(46) 50 I.C. 798=22 O.C. 1.
(47) 30 Cal. 516.
(48) 1925 All. 734=47 All. 926=23 A.L.J. 853=88 I.C. 888.
(49) *Cf.* 77 I.C. 1054=1923 Pat. 28=1 P.L.R. 16=3 P.L.T. 813.
(50) See *Vali Ram* v. *Karachi Bank*, 104 I.C. 391=1927 Sind 251.
(1) *Ibid.* 104 I.C. 391=1927 Sind 251.

to the mortgagee even if the property be redeemed before the date fixed by the decree.''[2]

743. Appeal from order for final decree —A person aggrieved by an order for final decree for sale of the mortgaged property, which is not an order in execution, but a judgment in the mortgage suit, must appeal against the final decree for sale of the mortgaged property, and must stamp the appeal *ad valorem*.[3] It is not sufficient to stamp an appeal from the final decree passed under O. XXXIV, R. 5, as an appeal from an order.[4]

744. Order absolute under Order 34, Rule 5.—An appeal by a judgment-debtor from an order absolute for sale of the mortgaged property, is not an appeal from an order in execution of a decree, but from a proceeding in continuation of the original suit, and the appeal lies under S. 96 (S. 544, old Code), as an appeal from an original decree,[5] and it must be stamped *ad valorem*, under Art. 1, Sch. I, of the Court-Fees Act,[6] on the decretal amount, and cannot be stamped as an appeal from an order.[7] Where an appeal was filed to set aside the final decree in a mortgage suit, on the ground that the preliminary decree should not have been made absolute inasmuch as all the necessary parties were not parties to the preliminary decree, it was held that the memorandum of appeal must bear *ad valorem* Court-fee, inasmuch as the object of the appeal was to get the whole decree set aside.[8]

745. Order 34, Rule 6, Civil Procedure Code.—APPEAL AGAINST PERSONAL DECREES.—An order refusing to make a decree under O. 34, R. 6 of Civil Procedure Code, is a decree within the meaning of the definition of that term in S. 2 of the Code, and an appeal against it must bear *ad valorem* Court-fees, calculated upon the value of the subject-matter of the appeal.[9] An appeal from a decree passed under R. 6, of O. 34, Civil Procedure Code, requires Court-fee *ad valorem*, and it is not an

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(2) *Vali Ram* v. *Karachi Bank*, 104 I.C. 391 (393)=1927 Sind 251.

(3) *Ahmed Rahman* v. *Chettiar*, 110 I. C. 873=1928 Rang. 194=6 Rang. 285; citing *Bajrangi Lal* v. *Mahabir Kunwar*, 35 All. 476=11 A.L. J. 801=21 I.C. 498 (F.B.); and *Jankibai Ramdayal* v. *Chinna Sadashiva*, 57 I.C. 579=22 Bom.L.R. 811.

(4) 35 All. 476=21 I.C. 498=11 A.L.J. 801 (F.B.), *supra*.

(5) *Manmatha Nath* v. *Khetra Mohan*, 29 Cal. 651; also see *Subbalakshmi* v. *Ramanujam*, 42 Mad. 52=48 I.C. 298.

(6) 35 All. 476=21 I.C. 498, *supra*. (F.-n. 4).

(7) *Jankibai Ramdayal* v. *Chinna Sadashiv*, 57 I.C. 579=22 Bom.L.R. 811; followed 35 All. 476, *supra*; also see *Charu Chandra Mitter* v. *Bhagirath Pershad*, 12 C.W.N. 1028; (order dismissing an application as barred by limitation is a decree); and *Bechu Singh* v. *Bichharam Sahu*, 1 I.C. 677=10 C.L.J. 91 (appeal by defendants in a mortgage suit).

(8) *Begum* v. *Qamarunnissa*, 50 I.C. 279; compare *Balmukund* v. *Haji Husanali*, 14 C.P.L.R. 100.

(9) *Mohammad Illifat Husain* v. *Alim-un-Nissa*, 47 I.C. 561=40 All. 553=16 A.L.J. 438; followed *Tajammul Husain* v. *Muhammad Husain Khan*, 35 I.C. 158=14 A.L.J. 328.

appeal from execution proceedings under S. 47 of the Code.[10] A composite decree combining a decree for sale, and a personal decree is valid, and the personal decree operates when the sale fails to satisfy the mortgage-debt.[11]

746. Order 34, Rules 7 and 8.—An appeal by plaintiff-mortgagor against order for redemption on payment of a certain sum, requires Court-fee *ad valorem* on the amount ordered to be paid.[12]

747. APPEAL IN SUITS FOR POSSESSION.—The value of an appeal for possession of immoveable property is ordinarily, but not in all cases, the value of the suit as originally filed;[13] as the value of the appeal is but the value of the relief granted by the decree which a party wishes to get rid of.[14] The governing rule applicable to appeals is the amount or value of the subject-matter in dispute, as provided in Sch. I, Cl. I of the Act, *e.g.*, for suits falling under S. 7 (v), the value as determined in sub-cls. (*a*) to (*e*) of S. 7, Cl. (*v*).[15]

748. Where the decree is conditional for recovery of possession, on payment of a sum of money, the subject-matter of the appeal is the land, and not any money;[16] but, the Court-fee leviable on appeal seeking the removal of the condition is an *ad valorem* fee on the amount directed to be paid by the lower Court.[17]

749. In a suit for ejectment where the tenant's claim for improvements is merely incidental to the decree for possession, Court-fee on appeal is payable as in a suit for possession.[18] But,

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(10) *Wasi Ali* v. *Jang Bahadur*, 30 I.C. 497=18 O.C. 121; followed *Lakhi Narain Jagdeo* v. *Krittibas Das*, 19 I.C. 971=18 C.L.J. 133; also see *Kama Venkatta Subba Iyer*, 21 I.C. 530; also see *Lakhi Narain* v. *Kirthibas Das*, 18 C.L.J. 133=19 I.C. 971.

(11) 1933 Oudh 529.

(12) *Lekh Ram* v. *Ramji Das*, 1 Lah. 234=57 I.C. 215; also see and *cf. Asghar Ali* v. *Mahabir*, 84 I.C. 742=1925 Oudh 102=27 O.C. 225 (Appeal against order for a decree absolute after overruling objection that decretal amount had been paid).

(13) In re *Porkodi Achi*, 68 I.C. 444=45 Mad. 246 (256)=1922 Mad. 211; also see and *cf. Maidari Begam* v. *Gulzar Bano*, 25 I.C. 395=36 All. 322.

(14) *Ibid.* also see 92 I.C. 624=1926 Mad. 225.

(15) In re *Ganapati Butchir*, 85 I.C. 405=48 Mad. 652=1925 Mad. 323; also see *Mittoomal* v. *Bashomal*, 116 I.C. 110=1929 Sind 161.

(16) *Ibid.* 85 I.C. 405=48 Mad. 652=1925 Mad. 323.

(17) *Wadhawa Singh* v. *Sundar Singh*, 59 I.C. 667=21 P.W.R. 1921; also see *Rup Narain* v. *Bishwa Nath*, 68 I.C. 265=44 All. 629; *Tikkan Ram* v. *Bosa Ram*, 67 I.C. 106 (Lah.); 1922 All. 358 (Suit for cancellation of sale-deed and possession); also see *Basdeo Ban* v. *Siri Krishen Gir*, 5 I.C. 941=13 O.C. 62. (Decree for possession conditional on payment of a sum disputed in appeal); followed in *Mata Badal Singh* v. *Jai Singh*, 15 I.C. 746; *Kishmi Dutt* v. *Kasi Pandey*, 57 I.C. 481=5 Pat. L.J. 455; *Balkishandas* v. *Jendo*, 108 I.C. 379=10 L.L.J. 55.

(18) 16 Mad. 310 (Decree for ejectment, and mesne profits, Court-fee on both land and profits); Reference under Court-Fees Act, 23 Mad. 84;

where in a suit for redemption of a *kanom*, a decree for possession was passed on payment of the amount of mortgage and the value of improvements, and an appeal was filed which related only to the value of improvements payable, Court-fee was payable *ad valorem* on the amount in dispute in appeal under Art. I of Sch. I, to the Court-Fees Act.[19]

750. An appellant need not pay higher Court-fee, when the claim has been dismissed in part, than he would be required to pay if the suit had been wholly dismissed.[20] An appellant is entitled to appeal against the whole decree dismissing or decreeing claim for possession, though he intends to challenge only a part of it, on which higher Court-fee may be leviable if appealed against separately.[21]

751. Mesne Profits.—It has been pointed by the ALLAHABAD High Court, that the "assessment of mesne profits is a proceeding in the suit, and it has nothing to do with the execution department. When the mesne profits are assessed a final decree is to be passed under the provisions of Civil Procedure Code, O. XX, R. 12 (ii); and the law requires the plaintiff in a claim for mesne profits to assess the amount of mesne profits and to pay Court-fee on that amount. When on a subsequent enquiry an assessment of mesne profits is made, if any further Court-fee is payable, it has to be paid. On payment of the Court-fee a regular decree comes into existence."[22] A suit for possession and mesne profits is governed by S. 7 (i), of the Act, and not by Cl. (3), or Cl. (6) of Art. 17 of Sch. II. Therefore, the Court-fees on the memo. of appeal must be paid on the amount claimed as mesne profits antecedent to the suit.[23] Similarly, in an appeal from a decree directing ejectment, and mesne profits, the Court-fee is payable on the subject-matter of appeal, *viz.*, the land and the mesne profits,[24] and any improvements by the tenant are not to be included in the valuation for the purpose.[25] Where a suit for recovery of possession of land and mesne profits was decreed in its entirety, but the Court did not ascertain the amount of mesne profits, the appeal was valued at the value of the land plus

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also see and *cf. Pathuma Umma* v. *Aliyammakkanath*, 110 I.C. 752=1928 Mad. 929 (Appeal disputing right to eject, and question of improvements; Court-fee as in a suit for recovery of possession); also see *Abdur Rehman* v. *Cheragh Din*, 19 P.R. 1908=129 P.L.R. 1908.

(19) In re *Tiruvangalath*, 92 I.C. 624=1926 Mad. 225.

(20) 92 P.R. 1900; also see 83 I.C. 332=5 Lah. 137=1924 Lah. 530.

(21) 1929 Lah. 190=9 Lah. 563; also see 1928 Mad. 929; and 1933 Mad. 108.

(22) *Collector of Etawali* v. *Bindraban*, 1931 All. 538=1931 A.L.J. 413; also see and *cf. Jagdip Sahai* v. *Khajuri Sahu*, 108 I.C. 801=9 P.L.T. 657; compare *Kandunni Nair* v. *Ittuni Nair*, 1932 Mad. 597=58 M.L.J. 497=31 L.W. 826=53 Mad. 540 (preliminary decree providing for subsequent determination of mesne profits).

(23) *Banwari Lal* v. *Sheo Shanker*, 1 I.C. 670=13 C.W.N. 815; compare *Kantichandra* v. *Radha Rama*, 57 Cal. 463.

(24) *Brahmayya* v. *Lakshmi*, 16 Mad. 310.

(25) Reference under the Court-Fees Act, 23 Mad. 84.

the amount of antecedent profits.[26] Where a decree allows mesne profits and directs inquiry to be made subsequent to the institution of the suit, and a final decree is passed in accordance with O. 20, R. 12, Civil Procedure Code, Court-fee is payable in appeal on the amount of mesne profits in dispute.[27]

752. It was held by a Full Bench of Patna High Court, that an *application* for ascertainment of mesne profits made to trial Court did not require to be stamped *ad valorem*;[28] but this is no authority for holding that an appeal to High Court disputing the amount ascertained by Court requires a fixed fee, as held in *Sheodin Singh* v. *Norangi Lal Ram*.[29] Accordingly, it was held in *Kedarnath* v. *Chandra Mouleshwar*[30] that a memorandum of appeal from an order made on an application, for ascertainment of mesne profits requires an *ad valorem* Court-fee on the amount by which the appellant sought to enhance the value of his decree,[31] and the rule applies whether profits are antecedent or subsequent.[32]

753. PRE-EMPTION APPEALS.—In pre-emption cases, the question of proper Court-fee leviable on the appeals must be decided with reference to the terms, not of Cl. (*vi*) of S. 7 of the Act, which is not applicable to appeals in pre-emption suits, but of Art. 1 of the first schedule to the Act, which provides that the Court-fee upon a memorandum of appeal is to be computed *ad valorem* with reference to the "amount or value of the subject-matter in dispute."[33] In an appeal preferred by the pre-emptor, where the object is to have the amount payable reduced by a certain sum, *ad valorem* Court-fee has to be paid on that amount which represents the value of the subject-matter of his appeal.[34] The subject-matter of the vendee's appeal is the land which according to his allegation has been wrongly decreed to the plaintiff; and, the Court-fee to be affixed to the memorandum of appeal is to be computed according to the value of the land estimated under the provisions of S. 7, Cl. (*vi*) of the Court-Fees Act.[35] In pre-emption cases, the Court is under an obligation

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(26) *Manik Chand Ram* v. *Bibi Najitbam*, 49 I.C. 962.

(27) *Balaram Naidu* v. *Sangan Naidu*, 45 Mad. 280=69 I.C. 722=1923 Mad. 19; also see in re *Punya Nabako*, 50 Mad. 488=100 I.C. 72=1927 Mad. 360 (Court-fee or ascertained mesne profits).

(28) 1926 Pat. 218=5 Pat. 361=93 I.C. 939 (F.B.).

(29) 129 I.C. 662; not followed in 1932 Pat. 228=137 I.C. 855=11 Pat. 532.

(30) 1932 Pat. 228=137 I.C. 855=11 Pat. 532; followed in *Dhanukdhari* v. *Ramadhikari*, 1933 Pat. 81=12 Pat. 188=142 I.C. 617; also see *Sideshwari Prosad* v. *Ramkumar*, 1933 Pat. 234=14 P.L.T. 180; and *Deonandan* v. *Ganga Pershad*, 8 Pat. 906=120 I.C. 373=1929 Pat. 731.

(31) 1933 Pat. 81=12 Pat. 188=142 I.C. 617, *supra*.

(32) 1933 Pat. 234=14 P.L.T. 180, *supra*.

(33) *Waryam Singh* v. *Mahtab Singh*, 76 P.R. 1913=19 I.C. 961=240 P.L.R. 1913=141 P.W.R. 1913 (F.B.).

(34) *Ibid.* 76 P.R. 1913=19 I.C. 961 (F.B.), *supra*. Also see 40 All. 353 (F.-n. 37).

(35) *Ibid.* 76 P.R. 1913=19 I.C. 961 (F.B.), *supra*. Also see *Harichand* v. *Attar Singh*, 1931 Lah. 490=131 I.C. 751. (*Held*, that the ven-

created by law to investigate and decide issues specified by S. 20 of the Pre-emption Act, if the evidence led by the parties is insufficient for the proper decision of the issues.[36] Where the question on appeal by plaintiff-pre-emptor concerns the payment of purchase-money, Court-fee is payable *ad valorem* on the amount by which he is seeking to reduce the consideration; and where the question raised in appeal is the right to pre-empt, the Court-fee in respect thereto must be calculated according to S. 7 (vi) of the Court-Fees Act.[37] But the principle is recognised that the Court-fee payable on the part of a whole claim in appeal is not to exceed the Court-fee payable on the whole claim.[38]

754. An appellant is entitled to pay diminished Court-fee by attacking the whole of the decree, in an appeal from a decree in a pre-emption suit, where by questioning only a part of the decree he may be required to pay increased Court-fees.[39] A Court cannot dismiss an entire appeal, but should hear the same to the extent to which Court-fee has been paid.[40]

755. LANDLORD AND TENANT.—In an appeal to have a lease declared perpetual (mourashi), the value of the claim being the difference between the valuation of the land held under a fixed rent, and that under an ordinary tenure at a fluctuating rent, is difficult of assessment, and the plaintiff's estimate of his valuation would be accepted by the Court.[41] An appeal by a defendant from a decree which directed him to pay the plaintiff for certain *faslies* before suit, 2½ per cent. on the gross revenue of a *Zamindari* and which reserved the determination of the actual amount for execution, is, however, capable of valuation, and the appellant should value it under S. iv (*f*), of the Act.[42] An appeal by a landlord defendant against a decree by lower appellate Court awarding possession of the disputed land to the plaintiff-tenant, cannot be valued in second appeal as an appeal for declaration only, on the ground that the plaintiff will in that case be his tenant, and, therefore, the question of possession does not arise.[43]

756. An appeal in a suit, under S. 95 of the Tenancy Act, for declaration of occupancy rights, is liable to Court-fees of annas

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dees challenging pre-emptors right to sue have to pay Court-fee in appeal same as was originally paid by pre-emptor.

(36) *Wisanda Mal* v. *Ganesha Mal*, 14 P.R. 1916.

(37) *Abinash Chandra* v. *Shekhar Chand*, 44 I.C. 666=40 All. 353=16 A.L.J. 174; also see and *cf. Harichand* v. *Attar Singh*, 1931 Lah. 490; and 1929 Oudh 240 (2)=117 I.C. 480=6 O.W.N. 276.

(38) 25 P.R. 1916; 83 I.C. 332=5 Lah. 137=1924 Lah. 530.

(39) *Nazar Muhammad* v. *Kala Ram*, 9 Lah. 563=113 I.C. 538; also see *Hari Chand* v. *Attar Singh*, 1931 Lah. 490=131 I.C. 751 (the vendee can reduce the value of the stamp payable by them to the amount originally paid by the pre-emptor: the challenge may be a complete formality and need not be pressed); also see 1929 Lah. 879=120 I.C. 532.

(40) *Amir Shah* v. *Syed Shah*, 1931 Lah. 237=131 I.C. 297=32 P.L.R. 129; *Nihal Chand* v. *Sardarimal*, 96 I.C. 135=1926 Lah. 558.

(41) *Kebal Ram* v. *Wells*, 24 W.R. 454.

(42) Reference under the Court-Fees Act, 11 M.L.J. 12.

(43) *Haladhar Pal* v. *Sheik Mongal*, 33 C.W.N. 217.

eight only, under Sch. II, Art. 5, which applies to plaints, or memoranda of appeals in suits to establish or disprove a right of occupancy.[44]

Where a decree passed under Madras Estates Land Act, declared a distraint partly valid, and the question raised in the memorandum of objections was as regards the exact amount of rent due, the subject-matter was capable of being estimated at money value, and so *ad valorem* fees were held necessary, and not a fixed fee within Cl. 17 (*b*) of the second schedule.[45]

757. **PRIORITY AND REDEMPTION.**—*Ad valorem* Court-fee is payable on the amount of charge which the defendant pleading a prior charge on the property directed to be sold under a mortgage, wants to have established as against the plaintiff.[46] If in a suit for sale on a mortgage, persons held to be subsequent mortgagees appeal claiming priority, the Court-fees is payable under S. 7, Cl. ix, and not as on a prayer for a declaration.[47] Similarly, where plaintiff's suit to recover money due on a mortgage-bond by sale of mortgaged properties is decreed subject to a mortgage of the defendant and the plaintiff appeals against that part of the decree, praying for its modification, "by removing the condition as to priority" of the deed of defendant and its redemption by the appellant, *ad valorem* court-fee should be paid on the value of the lien which it was sought to destroy.[48]

758. **REDEMPTION OF MORTGAGES.**—It has been noticed in the comments in the main portion of the work under S. 7 (ix), *ante*, that there is a conflict of view on the question whether paragraph ix, of S. 7, of the Act, is confined to suits only, or applies to appeals as well. The ALLAHABAD High Court has held that the section applies to suits, but not to appeals,[49] and that in plaintiff's appeal against the sum decreed to be payable on redemption, the Court-fee is *ad valorem* on the amount sought to be deducted from the decree;[50] similarly, where a mortgagor appeals on the ground that the mortgage has been satisfied out of the usufruct, and nothing remains due from him.[1] A Full Bench of the same Court has held that in the case of appeals, Court-fee is payable *ad valorem* under Art. 1, Sch. I, not on the

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(44) *Ratan Singh* v. *Khemkaran*, 44 I.C. 608=40 All. 358.

(45) *Maharaja of Pittapuram* v. *Chelikani Venkataroyanim*, 1930 Mad. 22=57 M.L.J. 260=122 I.C. 526=30 M.L.W. 357=1929 M.W.N. 608.

(46) *Moti Begum* v. *Har Prasad*, 16 A.L.J. 81=47 I.C. 311.

(47) Also see 1932 A.L.J. 45.

(48) *Premsukhidas* v. *Shah Gopi Sasan*, 51 I.C. 786=4 P.L.J. 323; followed in *Kundan Lal* v. *Duni Chand*, 140 I.C. 39=54 All. 347=1932 All. 221; also see 142 I.C. 770 (same case); 1932 All. 221; and *A. U. John* v. *Swraj Bhan*, 54 All. 553=136 I.C. 837=1933 All. 45=1932 A.L.J. 385 (*ad valorem* Court-fee on the decretal debt or on the value of the debentures held, whichever is less).

(49) 27 All. 447=2 A.L.J. 105=1905 A.W.N. 40.

(50) *Ibid.* 27 All. 447.

(1) 30 All. 547=1908 A.W.N. 247.

principal money charged, but on the amount found due at the date of decree, *i.e.*, on the subject-matter of appeal.[2] The MADRAS High Court has taken the same view,[3] observing that the value of an appeal is not in all cases the value of the suit as originally filed.[4] Thus, where the plaintiff appealed only against the improvements allowed to a *kanom* mortgagee the Court-fee was that payable on the value of the improvements which the party sought to avoid,[5] but, where the defendant disputes on appeal both the title of plaintiff to redeem, and the amount of compensation, Court-fee is payable only as on a suit for recovery of possession.[6]

759. The PATNA High Court[7] follows Allahabad, and Madras view;[8] and the LAHORE High Court holds that in appeals qua amount payable, Art. 1, Sch. I, applies,[9] but, in an appeal against a decree for redemption, S. 7 (ix) is applicable.[10]

760. On the other hand, the NAGPUR Judicial Commissioner's Court has held that Art. 1, Sch. I, of the Act does not stand by itself, but only supplements S. 7 and its clauses; thus, when the relief is valued under S. 7 (ix), the Court-fee on a memorandum of appeal is rated under Art. 1, Sch. I of the Act.[11] The OUDH Court holds similarly that the term "suit" is not used in the Act in contradistinction to the term "appeal"; and *suit*, includes proceedings both on "plaints," and on "memoranda of appeals," in different stages of the suit[12]

761. The Oudh Court has summed up the law, as tabulated below:—

(1) If a suit for redemption or foreclosure is dismissed, Court-fee on appeal, by plaintiff, is payable according to the principal debt: (S. 7, Cl. ix, the nature of suit is not changed).

(2) If a suit for redemption is decreed, and the defendant appeals against the right to redeem, the valuation in appeal is the same as in the original suit (S. 7, Cl. ix).

(3) If a suit for redemption has been decreed, and the plaintiff, or defendant, appeals only against the amount ordered

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(2) 36 All. 40; 47 All. 926=88 I.C. 888=1925 All. 734; also see 127 I.C. 32=1930 Oudh 329.

(3) 29 Mad. 367; also see and *cf.* 3 I.C. 459=20 M.L.J. 121.

(4) 68 I.C. 444=1922 Mad. 211=45 Mad. 246.

(5) 92 I.C. 624=1926 Mad. 225=22 M.L.W. 691=1926 M.W.N. 169.

(6) 110 I.C. 752=1928 Mad. 929; relied on 23 Mad. 84.

(7) 44 I.C. 50=3 P.L.J. 443.

(8) 36 All. 40 and 29 Mad. 367.

(9) 57 I.C. 215=1 Lah. 234=3 L.L.J. 370; 75 I.C. 667=1923 Lah. 309; 122 I.C. 736=1930 Lah. 601; 134 I.C. 124=1931 Lah. 633; and 1933 Lah. 155 (*ad valorem* on principal amount secured by mortgage).

(10) 67 I.C. 130=3 L.L.J. 156; 134 I.C. 124=1931 Lah. 633; 1933 Lah. 155.

(11) 8 I.C. 1125=6 N.L.R. 164.

(12) 54 I.C. 732 (735)=22 O.C. 289; also see 122 I.C. 736=1930 Lah. 601.

to be paid, or received, the Court-fee is *ad valorem* on the subject-matter in dispute on appeal (Art. 1, Sch. I).

(4) Where in a foreclosure suit, a decree has been passed for a certain sum, and the defendant denies plaintiff's right to foreclose on ground of non-liability to pay the sum decreed, Court-fee is payable *ad valorem* on subject-matter in dispute.[13]

762. Appeal against a portion of the decree.—(1) On an appeal in a redemption suit, relating to an item in the accounts, Court-fee need only be paid on the amount in question.[14]

(2) In a suit for sale on basis of a mortgage where decree declares separate liabilities of different properties, the defendant appealing against specific liability need pay Court-fee on that sum only.[15]

(3) In a suit to redeem certain land on payment of a share of a debt for which it had been mortgaged with other land, Court-fee on appeal against decree passed for redemption of part of the land, should be *ad valorem* of the share of the mortgage-debt.[16] The principle underlying this ruling to take the value chargeable under S. 7 (ix) of the Act, on the principal mortgage-money, is not reconcilable with the principle applicable to suits brought by a mortgagee.[17]

(4) In an appeal against a decree directing charge on a property, Court-fee is payable *ad valorem* on the charge not exceeding the value of the property sought to be charged.[18] According to PATNA High Court, the appeal claiming exemption of certain properties from liability under decree, is liable to Court-fees payable on the decretal amount or the value of the properties whichever is less.[19]

(5) In a claim for foreclosure, where there is no dispute as to price of redemption, and the dispute is confined to the right to foreclose *the whole or a portion* of the property, Court-fee is to be paid on the principal amount secured by the mortgage.[20] But, this view has been challenged in a later ruling of the same Court.[21]

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(13) 1922 Oudh 82=25 O.C. 30=67 I.C. 968; also see *Mardan Singh* v. *Sheoraj Singh*, 30 I.C. 323 (Appeal by mortgagor, against liability to pay money adjudged to be due to the mortgagee, *ad valorem* Court-fee on amount by which the decree is sought to be varied in appeal); and *Lekh Ram* v. *Ramji Ram*, 57 I.C. 215=1 Lah. 234 (Court-fee *ad valorem* on the amount by which the mortgage money is sought to be reduced); also see *Ramji Lal* v. *Shiffa Ram*, 75 I.C. 667=1923 Lah. 309; (*Ditto*).

(14) B.P.J. 1883, p. 39.

(15) 35 All. 92=18 I.C. 577.

(16) 16 Mad. 326; also see and *cf.* 1882 B.P.J. 106.

(17) 10 Mad. 187; 30 Mad. 96 (F.B.).

(18) 33 Cal. 1133; 11 C.W.N. 705; 37 Cal. 914=8 I.C. 1045; 33 All. 20=7 I.C. 315; 11 P.R. 1916=33 I.C. 138; and 7 Lah. 215=96 I.C. 473=1926 Lah. 408; also see (F.-n. 33, *ante*,); compare 5 Pat. 721=98 I.C. 807=1927 Pat. 46; also see (F.-n. 33).

(19) 5 Pat 721=98 I.C. 807=1927 Pat. 46.

(20) 20 I.C. 257.

(21) *Cf.* 111 I.C. 650=1928 Nag. 316.

(6) Where there are several mortgages upon same property, and only one is found to be genuine, Court-fee on appeal is payable on the value of the genuine mortgage.[22]

763. Appeals against Preliminary and Final decrees.—(1) Where in a redemption suit, the defendant denies the plaintiff's right to redeem, and also challenges the amount, and the trial Court passed a preliminiary decree, declaring the right to redeem, and directing the accounts to be taken, and another decree finding a certain sum to be due, the defendant's two appeals directed against these decrees were consolidated, and considered as one for purposes of Court-fee.[23]

(2) Where plaintiff obtained a preliminary decree, followed by a final decree, defendant could not on an appeal against the preliminary decree alone, indirectly appeal against the final decree.[24] But, when an appeal is pending from a preliminary decree in a mortgage suit, it is not necessary for the mortgagee to file another appeal from the final decree, and if he does so, he is entitled to a refund of the Court-fees paid by him on the petition in that appeal.[25]

(3) An appellant against a final decree, under O. 34, R. 3, should pay Court-fee as in any appeal from a final decree.[26] An appeal against a final decree in a foreclosure suit is appealable as any other final decree.[27]

(4) Where separate appeals are filed against a preliminary and a final decree, and full Court-fee has been paid on the former, a stamp of Rs. 2 is sufficient for the latter appeal.[28] But a combined appeal is competent to an appellant, if the dates of the decrees allow it.[29]

764. Court-fee in Foreclosure Appeals.—(1) The NAGPUR view that the value of an appeal, where the dispute is confined strictly to right to foreclose, whole or a portion of the property, is according to the principal sum secured, is shaken by inconsistent rulings on the point.[30]

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(22) 22 I.C. 609=1 L.W. 102=1910 M.W.N. 231.

(23) 39 All. 452=41 I.C. 346=15 A.L.J. 464; (Two preliminary decrees); see contra *Raja Peary Mohun* v. *Manohar*, 74 I.C. 373=38 C.L.J. 255=27 C.W.N. 989.

(24) 18 Bom.L.R. 76.

(25) 83 I.C. 829=1925 Oudh 39=11 O.L.J. 148.

(26) 111 I.C. 650 (*Punjaji* v. *Ram Chand*) 1928 Nag. 316; also see (F.-n. 39, *ante*); 107 I.C. 671=1928 Nag. 146 (*Jugal Kishore* v. *Nago*).

(27) 30 I.C. 492.

(28) 4 Lah. 406=75 I.C. 375=1923 Lah. 632.

(29) 33 I.C. 137=18 Bom.L.R. 80; also see 14 L.W. 389=19 M.W.N. 558; also see 18 B.L.R. 76=33 I.C. 146; and 15 I.C. 572=16 C.L.J. 564; also see and *cf.* 84 I.C. 674=1925 Cal. 218=40 C.L.J. 291 (memo. of appeal against preliminary decree amended, and converted to a combined appeal against both preliminary and final decrees).

(30) 20 I.C. 257; *cf.* 111 I.C. 650; (F.-n. 20 and 21, above).

(2) Where the right to foreclose is the *sole* matter in controversy, the subject-matter of appeal must be valued on the amount of principal debt,[31] subject to the qualification that the fee is payable on the amount found actually due by one party to the other[32] on the date fixed for payment, including interest *pendente lite*, but not future interest.[33]

(3) Where the appeal is against decree in foreclosure, questioning amount, Court-fees is payable on amount sought to be reduced or enhanced.[34]

(4) Where in a foreclosure suit a decree was passed conditional upon plaintiff paying a certain amount, and he appeals, an *ad valorem* Court-fee must be paid on the amount.[35]

(5) Where a suit is against a purchaser of an equity of redemption, the valuation for Court-fee purposes is the purchase-money.[36]

765. **SPECIFIC PERFORMANCE OF CONTRACT.**—In a suit for specific performance of a contract to grant a lease, the valuation of the suit, is determined in accordance with the rule embodied in S. 7, sub-section (*x*) (*c*), of the Court-Fees Act; and the memorandum of appeal should bear the same value for purposes of Court-fees, and jurisdiction.[37]

766. **PROVISO.**—The proviso at the end of Art. 1, Sch. I, applies generally and fixes the maximum fee leviable on *any* plaint or memorandum of appeal, at Rs. 3,000,[38] for which there is no provision fixing the amount of fees chargeable in some other part of the Act. Thus the rule laid down in S. 17 regarding multifarious suits is subject to this proviso, and the maximum fee leviable on the plaint or memorandum of appeal in such a suit is Rs. 3,000.[39] The Court-fees on consolidated appeals under S. 17 of the Court-Fees Act is subject to the limitation under Art. 1, Sch. I of the Act.[40]

The Proviso to Art. 1, Sch. I, refers in terms only to the maximum fee leviable on a plaint or memorandum of appeal, and leaves out any reference to a written statement pleading a set off or counter-claim, but there is no authority for charging a larger

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(31) 8 I.C. 1125=6 N.L.R. 164; and 3 I.C. 459=20 M.L.J. 121.

(32) 47 All. 926=88 I.C. 888; and 3 P.L.J. 443.

(33) 18 I.C. 365=35 All. 94; *cf.* 127 I.C. 32=1930 Oudh 329.

(34) 5 N.L.R. 130; also see 29 I.C. 609=11 N.L.R. 83 (F.-n. 37, *ante*.)

(35) 47 I.C. 311=16 A.L.J. 81; (claim for dower charged upon property); 31 All. 265=6 A.L.J. 155=1 I.C. 100; also see 51 I.C. 786=4 P.L.J. 323 (F.-n. 46 and 48, *ante*).

(36) 4 C.L.J. 121=10 C.W.N. 1010=33 Cal. 1133.

(37) 66 I.C. 268=25 C.W.N. 768=34 C.L.J. 94.

(38) *Raghobir Singh* v. *Dharam Kuar*, 3 All. 108 (111) (F.B.).

(39) *Ibid.* 3 All. 108 (F.B.).

(40) *Kashi Prosad Singh* v. *Secretary of State*, 29 Cal. 140.

sum on a written statement than that fixed as the maximum in Sch. I.[41]

SCHEDULE I, ARTICLE 2.

Number.		Proper Fee.
2. Plaint....in a suit for possession under [the Specific Relief Act, 1877 Sec. 9].	.. ..	A fee of one-half of the amount prescribed in the foregoing scale.

Comments.

767. LEGISLATIVE CHANGES.—The words "or memorandum of appeal," after the word "plaint" in column (1) have been repealed by the Court-Fees Amendment Act, 1870, (Act XX of 1870); and, the words "the Specific Relief Act, 1877, S. 9," were substituted for the words and figures "Act No. XIV of 1859 (to provide for the limitation of suits)", by the Amending Act, 1891 (Act. XII of 1891).

768. LOCAL AMENDMENT.—By the Madras Court-Fees Amendment Act (Act V of 1922), (Madras), a new article has been added as Art. 2, (Madras), between Arts. 1 and 2 of the main Act, and this Art. 2, in the main Act is re-numbered as Art. 3 in the Madras Act V of 1922:

The Madras Art. 2 runs as follows:—

Plaint or written statement, pleading a set-off or counter-claim presented to a court outside the Presidency town in any suit of the nature cognizable byCourt of Smali Causes when the amount, or value, of the subject-matter does not exceed Rs. 500.	When the amount or value of the subject-matter in dispute does not exceed 5 rupees	Six annas.
	When such amount or value exceeds 5 rupees, for every 5 rupees or part thereof in excess of 5 rupees up to 100 Rs. ..	Do.
	When such amount or, value exceeds 100 rupees for every 10 rupees or part thereof in excess of 100 rupees up to 500 rupees	Twelve annas.

769. SUITS UNDER S. 9, SPECIFIC RELIEF ACT.—This section provides for protection of existing peacable posses-

(41) *Md. Mumtazali* v. *Md. Saadat Ali*, 1930 Oudh 140=5 Luck. 621 =7 O.W.N. 147=125 I.C. 172 (No reason for confining the words of the proviso to a plaint or a memorandum of appeal).

sion against unlawful disturbance, by restoring the dispossessed holder, in a comparatively summary process where questions of title are not to be dealt with. A suit under this section should be brought within six months from the date of dispossession[42] for restoration of possession to party dispossessed by another, leaving the question of their respective title, to be decided in a regular suit for possession, if they are so advised,[43] the remedy, of a title suit not being excluded by this summary and speedy remedy provided by the Specific Relief Act.[44] The Court-fee payable under this article is half of usual fee in a title suit.

770. **MADRAS ART. 2.—Application of.**—This article applies to "plaints or written statements pleading a set off or counter-claim presented to a Court outside the presidency town, in any suit of the nature cognizable by Court of Small Causes."[45] By the Provincial Small Cause Courts Act, S. 15, it is enacted that "(1) a Court of Small Causes shall not take cognizance of the suits "specified in the second schedule as suits excepted from the "cognizance of a Court of Small Causes; (2) subject to the excep- "tions specified in that schedule and to the provisions of any "enactment for the time being in force, all suits of civil nature of "which the value does not exceed five-hundred rupees shall be "cognizable by a Court of Small Causes....." A suit exceeding the limit, "although of a nature cognizable by a Small Cause Court, is not cognizable. The words "of nature cognizable" seem to have reference to the subject-matter of the suit as distinguished from the amount of the claim.[46] The nature of the suit is determined by the legislature, but it leaves the Local Government to decide whether the suits shall, in fact, be tried as small cause suits or not, and this the Local Government does by establishing Small Cause Court, or by investing existing regular Courts with a greater or less degree of small cause jurisdiction.

The Court-fee payable is determined, under Art. 2, by the nature of the claim, regardless of the fact whether a case is tried on the original side, or as a small cause suit.[47]

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(42) See Limitation Act, Art. 3.

(43) *Krishnarao* v. *Vasudev*, 8 Bom. 371 (375); *Rudrappa* v. *Narsingrao*, 29 Bom. 213 (object of S. 9, Specific Relief Act is to discourage people from taking the law into their own hands); also see *Wali Ahmed* v. *Ajydhia Kandu*, 13 All. 537 (558, 562) and *Mari Doddatamma* v. *Santaya Ramkrishna*, 68 I.C. 490=1922 Bom. 216=24 Bom.L.R. 768; and *Harimohan* v. *Khalil*, 48 I.C. 433.

(44) *Ram Dayal* v. *Saraswati*, 49 All. 191=99 I.C. 568; (The remedy, independent of the Act, of a suit founded on a claim of possessary title is not excluded).

(45) 23 Mad. 547=10 M.L.J. 329 (F.B.).

(46) *Ibid.*

(47) See G. O. No. 3895, dated 6-12-1927 and Madras Government Notification, dated 11-1-1928 (suits exceeding Rs. 500, but not exceeding Rs. 1,000 and annas 12 for every ten rupees or part thereof; provided that the full fee shall become payable, if for any reason the suit cannot be tried as a small cause suit).

Where under the provisions of S. 17 of this Act a claim of the nature cognizable by a Court of Small Causes is combined with an original side claim, the Court-fees payable on each claim is on the different scale provided.

771. Court-fee is leviable on suits of small cause nature not exceeding Rs. 500 in value, under Art. 2, if tried as a small cause suit; or tried as an original suit. If the suit exceeds Rs. 500, but does not exceed Rs. 1,000, the reduced Court-fees is payable if the suit is tried as a small cause suit, but Court-fee is payable under Art. 1, if it is tried as an original suit. If the suit is above Rs. 1,000 in value, it will have always to be filed and tried as an orignial suit. There is no appeal from a suit tried as a small cause suit; but there is a first appeal from a suit tried as an original suit. If a suit of a small cause nature, tried as an original suit does not exceed Rs. 500 in value, there is no second appeal. But a second appeal lies where the suit exceeds Rs. 500 in value.

Number.		Proper Fee.
3. [*Repealed by Act VIII of 1871*].		
4. Application for review of judgment if presented on or after the nineteenth day from the date of the decree.	.. ..	The fee leviable on the plaint or memorandum of appeal.
5. Application for review of judgment if presented before the nineteenth day from the date of the decree.	.. ..	One-half of the fee leviable on the plaint or memorandum of appeal.

Comments.

772. **APPLICATIONS FOR REVIEW OF JUDGMENT.**— S. 114, Civil Procedure Code, and O. 47, deal with the powers of review, and the detailed procedure on such applications. Under Art. 5, Sch. I of the Court-Fees Act, the concessional half-rate is to be paid only if the application for a review of judgment is presented "*before* the ninetieth day."[48]

This period cannot be extended, for Court-fees purposes, under Ss. 5 and 12 of the Limitation Act.[49] The two Acts are not

(48) 88 I.C. 1019=1925 Lah. 377; also see 9 Mad. 134.

(49) 88 I.C. 1019=1925 Lah. 377; also see *Syera Bibi* v. *Bhutnath*, 15 I.C. 455=15 C.L.J. 505 (Sundays, and holidays are not to be excluded from the period of 90 days); and 39 P.B. 1879 (S. 5 of the Limitation Act not applied).

in *pari materia*, and the applicant is not entitled to a deduction of time spent in obtaining the copies of the judgment,[50] and cannot get an allowance if the last day for filing the application falls on a Sunday, or a holiday.[1]

773. COMPUTATION OF TIME.—In computing the period of 89 days, the time during which the Court is closed for vacations cannot be excluded.[2]

The stamp must be paid in full after the 89th day, whatever the cause for the delay.[3]

The date of the decree is the date of signing of the decree;[4] and the date of presentation to the stamp reporter is the proper date for computation.[5]

774. The period for an application for review of judgment of 90 days is for Courts other than the High Court, and the Presidency Small Cause Courts. Under Art. 161 of the Limitation Act, the period "for a review of judgment by a Provincial Court of Small Causes, or by a Court invested with the jurisdiction of a Provincial Court of Small Causes when exercising that jurisdiction," is "fifteen days," from "the date of the decree or order."[6] And, under Art. 162 of the Limitation Act, the period "for a review of judgment by any of the following Courts namely, the High Courts of Judicature at Fort William, Madras, Bombay, Lahore and Rangoon and the Chief Court of Sind, in the exercise of its original jurisdiction", is "twenty days" from "the date of the decree or order." It may be noticed that the power of the High Courts to "*review* the case, or such part of it as may be necessary", under Cl. 26 of the Letters Patent is not "review of judgment" within the meaning of Art. 162 of the Limitation Act. Similarly, a review of an order made, under S. 8 of the Presidency Town Insolvency Act, is not a "review of judgment." Under Art. 173 of the Limitation Act, the period given is "90 *days*," from "the date of the decree or order" "for a review of judgment except in the cases provided for by Art. 161, and Art. 162". The operation of the article is limited to applications for review, under the Code of Civil Procedure.[7]

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(50) 9 Mad. 134.

(1) 88 I.C. 1019=1925 Lah. 377; also see *Jugat* v. *Jogeshwar*, 2 O.C. 302 (Time taken for obtaining copies are not to be excluded).

(2) In re *Kota*, 9 Mad. 134; *Syera Bibi* v. *Bhudnath*, 15 I.C. 455=15 C.L.J. 505 (Benefit of Art. 5 not claimable where the 89th day was a holiday).

(3) *Ibid.* also see 9 C.L.R. 479 (Court in recess).

(4) 35 I.C. 348=24 C.L.J. 235 (*Kalipada* v. *Sekhar*).

(5) 80 I.C. 294=1924 Cal. 994 (*Nowrang* v. *Janardhan*) (Power of refund exercised under S. 14 of Court-Fees Act).

(6) Art. 161, Second Schedule, Limitation Act, 1877.

(7) In the matter of *L. W. Nasse*, 1929 Rang. 229=7 Rang. 201. [*Held*, that "Review of judgment" in Art. 173 (and Art. 162), refers to review under Order 47, Rule 1, C. P. Code]; also see *Haji Ranjan* v. *Hafiz Abdul*, (1927) 32 C.W.N. 411 (Articles 162, 173, Limitation Act, limited to applications under the Code of Civil Procedure.)

775. **SCOPE AND APPLICABILITY OF THE ARTICLE—Review of orders ending in decrees.**—These Arts. 4 and 5, of the Court-Fees Act, prescribe the fee for review of judgment at full rates when the application is presented "on or after the ninetieth day", and at half rates, when the application is presented "*before* the ninetieth day", "from the date of the *decree*". These articles refer to ORDERS ENDING IN DECREES, and do not apply, therefore to a review application from an interlocutory order.[8] Consequently, an application for review of an INTERLOCUTORY ORDER was held properly stamped when presented on a Court-fee of Rs. 2 only.[9] Under the old Code of 1882, an ORDER DISMISSING AN APPEAL FOR DEFAULT used to be regarded by the Calcutta High Court as a decree; and the Full Bench decision in *Fatimanneesa* v. *Deohi Pershad,*[10] had held that a decree of a Division Bench of the High Court, dismissing an appeal for default in depositing the estimated costs of preparation of the paper book, could only be set aside by an order under (S. 626 of old Code), O. 47, R. 4, Civil Procedure Code. But, in the Code of 1908, the definition of decree expressly excludes an order of dismissal for default. Such applications can now be entertained under O. 41, R. 19, read with S. 151 of the Code, and Arts. 4 and 5, Court-Fees Act, do not govern such an application.[11] An application for review of judgment such as is alluded to in Arts. 4 and 5, Sch. I of the Act, does not include an APPLICATION FOR A NEW TRIAL in a small cause Court in the mofussil.[12]

776. **APPLICATION UNDER O. 47, R. 1, CIVIL PROCEDURE CODE—not under S. 151, Civil Procedure Code.**—Where the power is granted by the Code itself under O. 47, R. 1, it is not necessary to invoke the inherent powers of the Court under S. 151, Civil Procedure Code. The powers exercisable under those respective provisions are not mutually exclusive. If the Court chose to proceed under S. 151, Civil Procedure Code, on an application headed as one under O. 47, R. 1, and S. 151, Civil Procedure Code, no application on the part of the petitioners, far less any with Court-fees as on an application for review being necessary, the conditions requisite for a refund under S. 15, were held satisfied.[13]

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(8) *Jagannath Prasad* v. *Mulchand,* 31 All 262 (264)=6 A.L.J. 151 =1 I.C. 999.

(9) *Ibid.* 31 All. 262 (264); followed *De Souza* v. *Secretary of State,* 1892 B.P.J. 383.

(10) (1897) 24 Cal. 350=1 C.W.N. 21 (F.B.).

(11) *Nalini Sundari Debya* v. *Narendra Chandra,* 141 I.C. 305=1932 Cal. 641=36 C.W.N. 246; *Haridasi Debi* v. *Sajani Mohan Batabyal,* 1932 Cal. 770=36 C.W.N. 564=55 C.L.J. 314=138 I.C. 393=59 Cal. 1334; also see *Sonubai* v. *Shivaji Rao,* 45 Bom. 648=1921 Bom. 20=60 I.C. 919; and 1931 Sind 153; also see and *cf. Ananta Potdar* v. *Mangal Potdar,* 1926 Pat. 27=4 Pat. 704=91 I.C. 483.

(12) *Gopeenath Roy* v. *Ram Joy,* 14 W.R. 249; also see *Chhote Lal* v. *Bulaki Das,* 7 Bom.H.C.R. 109.

(13) *Probbas Kumar* v. *Nithar Lal,* 84 I.C. 278=1924 Cal. 1054=28 C.W.N. 928; also see and compare *Peary Chowdhry* v. *Sonoory Das,* 27 I. C. 628 (Inherent jurisdiction); and *Chintakalaya* v. *Chintakalaya,* 35 L. W. 618=1932 Mad. 438 (S. 151, C. P. Code).

777. **REVIEW OF APPELLATE DECREE.**—Art. 5 of the Sch. I, to the Act, has been applied to an application for review of judgment of the appellate Court. In *Hussaini Begum* v. *The Collector of Muzaffar Nagar*,[14] it was held by the Allahabad High Court, that "for the purpose of ascertaining the Court-fee to be paid on an application to review a decree passed in appeal, the fee which must be considered was the fee leviable on the memorandum of the appeal in which the decree sought to be reviewed was passed, and not the fee which was leviable on the plaint, or on the first appeal."[15] In *Altap Ali* v. *Jamsur Ali*, the Calcutta High Court applied Art. 4 to an application for review presented after the 90th day of the High Court's judgment dismissing a second appeal under O. 41, R. 11 (1), Civil Procedure Code, arising out of a suit for partition.[16] It was observed that the dismissal of an appeal under O. 41, R. 11, Civil Procedure Code, is a "decree," within the definition of the term in S. 2 (ii) of the Civil Procedure Code.[17]

778. **SUIT ON APPEAL IN FORMA PAUPERIS.**—The world "*leviable*" instead of "*levied,*" has been used in order to provide for an application for review by a defendant or respondent in the case of a suit or appeal *in forma pauperis*.[18]

779. **EX PARTE APPLICATION.**—Where after a decree for possession, execution was issued for delivery of possession, and on the judgment-debtor appealing against the decree, an application was made for stay of the writ, the Court had power, on ex parte application to make an order recalling the writ.[19]

780. **PROCEEDINGS FOR LETTERS OF ADMINISTRATION.**—The right of review, in proceedings for letters of administration, exists under the general powers conferred by the Civil Procedure Code, and is quite distinct from the power given by S. 234 of the Succession Act to revoke a grant of letters of administration.[20]

781. **"LEVIABLE": "ON THE PLAINT OR MEMORANDUM OF APPEAL"—Computation of fee when application only relates a portion of the judgment.**—The words "leviable on the plaint or memorandum of appeal," are not to be construed as meaning the fee leviable on a plaint or memorandum of

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(14) 11 All. 176=9 A.W.N. (1889) 27=13 Ind. Jur. 316.

(15) *Ibid.* 11 All. 176 (179) per *Edge, C. J.*

(16) 1926 Cal. 638=30 C.W.N. 334=93 I.C. 909.

(17) *Uma Sundari* v. *Bindu Bashini*, 24 Cal. 759; followed in *Muniswami* v. *Muniswami*, 22 Mad. 293; and *Asma Bibi* v. *Ahmad Hussain*, 30 All. 290=1908 A.W.N. 109=5 A.L.J. 584; and *Chandra Kanta* v. *Lakshman*, 21 C.W.N. 430=24 C.L.J. 517=36 Cal. 460.

(18) In the matter of *Sheikh Maqbul Ahmed*, 31 All. 294 (300)=1 I. C. 209=6 A.L.J. 215.

(19) *Rash Behari* v. *Hemanta Kumar*, 88 I.C. 921=41 C.L.J. 349=1925 Cal. 1023.

(20) *Kyone Hoe Tsee* v. *Kyon Soon Sun*, 91 I.C. 509=1925 Rang. 314=3 Rang. 261.

appeal asking for the same relief as that asked for in the application for review.[21] The Act draws no distinction between applications for review of judgment when the application affects the whole of the decree, or only a portion thereof.[22] Upon an application for review, no matter what may be the actual relief sought, the Court-fee leviable is the fee actually leviable upon the memorandum of appeal upon which the judgment, of which review is sought, was passed.[23] The use of the term "leviable" in Art. 5 of Sch. I to the Limitation Act does not justify the inference that the legislature intended to introduce a fiction into the law, namely, an imaginary representation of the plaint or memorandum of appeal at the time when the application for review is filed.[24] The Calcutta High Court holds that as soon as a suit has been instituted, the amount of Court-fee payable on a possible application for review of the prospective judgment in the suit becomes fixed.[25] The words "plaint or memorandum of appeal" do not mean the plaint or memorandum of appeal asking for the same relief as that asked for in the application for review, but they mean the plaint or memorandum of appeal in which the judgment, the review of which is asked for, was passed.[26] An application for review must, therefore, if presented before the 90th day from the date of the decree, bear one half the fee levied or leviable on the plaint or memorandum of appeal, out of which the application has arisen, without reference to the relief asked for in the application for review.[27] This is the view held by Allahabad, Calcutta, Lahore, Nagpur, and Oudh Courts; though the Bombay and Madras High Courts take a more liberal, but qualified view of the above words.[28] The Rangoon High Court has also held that it is sufficient if fees are paid on the actual relief sought for in an application for review and it is not necessary to pay the same fees as on the original plaint or memorandum of appeal.[29]

782. REVIEW IN FORMA PAUPERIS.—An application for review of judgment *in forma pauperis* is not liable to any

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(21) In the matter of *Sheikh Maqbul Ahmad*, 31 All. 294=1 I.C. 209 =6 A.L.J. 215 (Diss. from 7 Mad.H.C. Rep. App. 1); compare also in re *Manohar Tambekar* (4 Bom. 26); decision arrived at "not without hesitation"; also see *Nobin Chunāra* v. *Mohammed Uzir Ali*, 3 C.W.N. 292; and *Imdad Hasan Khan* v. *Badri Prasad*, C.W.N. 1898, p. 212.

(22) 31 All. 294=1 I.C. 209=6 A.L.J. 215, *supra*.

(23) *Fakhur Ali* v. *Sahib Nur*, 20 I.C. 3=254 P.L.R. 1913.

(24) *Nandlal Agrani* v. *Jogendra Chandra Datta*, 82 I.C. 297=1924 Cal. 881; also see *Satya Kripal* v. *Satyahikas*, 57 Cal. 679; and see *Ibrahim Ali* v. *Ahsan Hussain*, 142 I.C. 416 (Nag.)=1930 Cal. 631=129 I.C. 191.

(25) *Ibid.* 82 I.C. 297=1924 Cal. 881=28 C.W.N. 403.

(26) *Nageshar Sahai* v. *Shiam Bahadur*, 1924 Oudh 108=74 I.C. 255 =26 O.C. 33=11 O.L.J. 339.

(27) *Ibid.* 74 I.C. 255, *supra*.

(28) 31 All. 294; 82 I.C. 297=1924 Cal. 881; 3 C.W.N. 292; 20 I. C. 3=254 P.L.R. 1913; 74 I.C. 255=1924 Oudh 108=11 O.L.J. 339; *cf.* 7 M.H.C.R. Appl.; and 4 Bom. 26; also see and compare 100 I.C. 72=50 Mad. 488.

(29) 1933 Rang. 203; follows 1927 Mad. 360; and 1925 Rang. 145.

Court-fee;[30] but the RANGOON High Court holds that such an application is not in continuation of the appeal, and the Court has no inherent power to give leave to apply for review *in forma pauperis*.[31] Neither the Civil Procedure Code, nor the Court-Fees Act contemplates or provides for an application for review of judgment *in forma pauperis*, and the petitioner for review, who had not been declared a pauper in any of the earlier stages of the case, was held liable to file the usual stamp required by law on his application.[32] However, the MADRAS High Court, in an unreported case, seems to have taken a different view. It was recognised that a person who institutes a suit in the ordinary way may be declared a pauper during the course of it; and the practice in Madras is stated to be such that an appellant may qualify as a pauper subsequent to the institution of the appeal, and would be allowed to plead pauperism in a proceeding connected with the appeal, that is to say, in a review application.[33]

783. **EFFECT OF AMENDING ACTS, ON APPLICATION FOR REVIEW.**—The MADRAS High Court has held in *In re Punya Nahako*[34] that where a judgment in appeal was passed before the Madras Amending Act, 1922, came into force, and an increased Court-fee was payable on the date when a review application was put in, the Court-fee leviable on such application must be calculated as if the application for review were a memorandum of appeal for the relief sought for, and that the fee was leviable according to the new scale. The words could be construed in at least four different ways, but the learned Judge holds that the words "the fee leviable on the plaint or memorandum of appeal", mean the proper fee to be levied if the applicant for review was then putting in a plaint or memorandum of appeal for the same relief. It may be noticed that this construction of the section is opposed to the view of the Calcutta High Court, in *Nanda Lal* v. *Jogendra Chandra*,[35] already noticed. And, the ALLAHABAD High Court holds that the fee on the application for review must be calculated on the basis of the fee leviable on the memorandum of appeal according to the law in force when the memorandum was filed.[36]

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(30) *Umda Bibi* v. *Namia Bibi*, 20 All. 410; also see *Nobinchandra* v. *Mohmad*, 3 C.W.N. 292; and see in the matter of *Sheikh Maqbul Ahmad*, 31 All. 94 (F.N. 18), *ante*.

(31) *Ma Nyein* v. *Patel*, 127 I.C. 470=1930 Rang. 280=8 Rang. 423.

(32) *Karamkhan* v. *Butakhan*, 91 P.R. 1895; see Order 33, and Order 44, C. P. Code.

(33) Civil Mis. Petn. 4014, 4015 of 1926 in A. S. No. 25|24; cited in *Satyamurthi's* Edn. of Court-Fees Act, p. 395.

(34) 100 I.C. 72=52 M.L.J. 128=25 L.W. 203=1927 M.W.N. 101 =38 M.L.T. 40=1927 Mad. 360=50 Mad. 488 (Court-fee payable on ascertained mesne profits up to date of memo. of appeal).

(35) 82 I.C. 297=28 C.W.N. 403=29 C.L.J. 222=1924 Cal. 881; (F.N. 24, *ante*.); also see in the matter of *Aqbal Ahmad*, 1 I.C. 209=31 All. 294; and *Nagehar Sahai* v. *Shian Bahadur*, 1924 Oudh 108=74 I.C. 255 (F.N. 26, above); and see and compare *Sheikh Abdulghani* v. *Sito Singh*, 1925 Pat. 368=56 I.C. 143.

(36) *Parmeshar Karmi* v. *Bakhtawar Pande*, 1933 All. 20=1932 A.L.J. 908.

Number		Proper Fee.
6. Copy or translation of a judgment or order not being, or having the force of, a decree.	When such judgment, or order is passed by any Civil Court other than a High Court, or by the presiding Officer of any Revenue Court or Officer, or by any other Judicial or Executive Authority—	
	(*a*) If the amount or value of the subject-matter is fifty or less than fifty rupees.	Four annas. [6 annas in Bengal, Bihar and Orissa, and Madras.]
	(*b*) If such amount or value exceeds fifty rupees.	Eight annas. [Twelve annas in Bengal, etc.]
	When such judgment or order is passed by a High Court.	One rupee. [One Rupee, and Eight annas, in Bengal, etc.]
7. Copy of a decree or order having the force of a decree.	When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court—	
	(*a*) If the amount or value of the subject-matter of the suit, wherein such decree or order is made is fifty or less than fifty rupees.	Eight annas. [Twelve annas in Bihar and Orissa.]
	(*b*) If such amount or value exceeds fifty rupees.	One rupee. [One Rupee and Eight annas in Bihar and Orissa.]
	When such decree or order is made by a High Court.	Four rupees. [Six Rupees in Bihar and Orissa.]

Comments.

784. LEGISLATIVE CHANGES.—This Art. 6 has been amended in Bengal, by Act IV of 1922; in Bihar and Orissa, by Act II of 1922; in Madras, by Act V of 1922; and in United Provinces, by Act III of 1932; and the fees payable under the article have been enhanced.

By Madras Act V of 1922, a new Art. 6-A has been enacted; providing for Court-fee on copy or translation of judgment or order of Criminal Courts in the Madras Presidency.

The fees payable under Art. 7 have been enhanced in Bihar and Orissa, by Act II of 1922; and in United Provinces, by Act III of 1932.

785. COPY OR TRANSLATION.—Where portions of *Khata* books are translated, each portion translated is treated as a separate document, and a portion less than a folio is to be charged as a whole folio. The portions are not to be added together and charged according to the folios that they may thus comprise.[37]

786 DEFINITIONS.—For the definition of a "judgment," and "order", see S. 2 of the Civil Procedure Code. A "*judgment*" means the statement given by the Judge of the grounds of a decree or order.[38] An "*order*" is the formal expression of any decision of a Civil Court which is not a decree.[39] A "*decree*" means the formal expression of an adjudication which so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit, and may either be preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within S. 47, or S. 144, but shall not include (*a*) any adjudication from which an appeal lies as an appeal from an order, or (*b*) any order of dismissal for default.[40]

787. SCOPE AND APPLICATION OF THE ARTICLES.—Article 6 provides for copies of judgment or order not having the force of a decree; while Art. 7, provides for copies of judgment or order having the force of a decree. These relate to Civil Courts. In Madras, copy or translation of a judgment or order of a Criminal Court is provided for in Art. 6-A. Those not provided for by Arts. 6 and 7, and by Art. 6-A at Madras are provided for in Art. 9. This applies to revenue and Criminal Courts, and administrative offices. The fee levied under Arts. 6 and 7 is on money-basis, but the fee levied under Art. 9 is computed on the number of words in the judgment or order. Article 6-A, Madras, was added by the Madras Amendment Act of 1922, and provides

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(37) *Brojonath Dhur* v. *Bhabo Mohan Dhar*, 6 B.L.R. App. 137.
(38) Section 2 (9), C. P. Code.
(39) Section 2 (14), C. P. Code.
(40) Section 2 (2), C. P. Code.

a fee of eight annas for a copy or translation of a judgment or order of a Criminal Court. Notes of judgment of a Small Cause Court are "copies of decrees" within the meaning of this article.[41]

Number.		Proper Fee.
8. Copy of any document liable to stamp duty under the Indian Stamp Act, 1879, when left by any party to a suit or proceeding in place of the original withdrawn.	(*a*) When the stamp duty chargeable on the original does not exceed eight annas.	The amount of the duty chargeable on the original. [One and a half times the amount of the duty chargeable on the original —in Bihar and Orissa.]
	(*b*) In any other case.	Eight annas. [Twelve annas in Bihar and Orissa and United Provinces.] [One Rupee in Bombay.]

Comments.

788. LEGISLATIVE CHANGES.—This Article has been amended as noted in third column, in Bihar and Orissa, by Act II of 1922. Similarly, the Court-fee have been enhanced in Bombay, by Act II of 1932; and, in United Provinces, by Act III of 1932. See Appendix.

789. SCOPE, AND APPLICABILITY.—A Full Bench of the BOMBAY High Court, has held in *Harichand* v. *Jivana Subhand*,[42] that where the original entries from the day books and ledger of the plaintiff produced in Court not having been in the hand-writing of the debtor, were not liable to stamp-duty under Sch. I, Art. 1, of the Stamp Act, I of 1879, the copies furnished of the said entries to the Court, on the books being returned to the party producing the same, were not chargeable with any Court-fees under Sch. I, Art. 8 of the Court-Fees Act. This was followed and approved in *Kastur* v. *Fakiria*[43] where it was held that a copy or extract from an entry in an account-book filed under the provisions of Ss. 141-A, and 142-A of the Civil Procedure

(41) 6 Mad. H.C.R. App. 12; and 6 Mad. H.C.R. App. 24.
(42) 11 Bom. 526 (F.B.).
(43) 26 Bom. 522; followed in 27 Bom. 150.

Code, requires no stamp under Art. 24 of Sch. I of the Stamp Act, II of 1899. The Court is required to cause the copy to be examined, compared and attested, but it is not certified by or by order of any public officer to be a true copy or extract when so produced[44] and subsequent certificate by the clerk of Court did not bring the documents within the terms of Art. 22 of Sch. I of the Stamp Act.[45]

790. The PUNJAB CHIEF COURT has held in *Rustamji* v. *Kala Singh*,[46] that there is no law which requires that a general power-of-attorney should be placed on the record of a suit (compare Civil Procedure Code, O. 1, R. 12; O. 3, Rr. 2, 4 and 6; and, O. 18, R. 1), and that where the original power-of-attorney was produced for verification and in accordance with the rules and orders of the Chief Court an unstamped copy was filed and left on the record, the copy of the general power-of-attorney filed in the case was not chargeable with any stamp duty under Art. 8 of Sch. I of the Court-Fees Act. To make a copy of a document liable to be stamped under this Article, it must be shown (1) that the original is chargeable with stamp duty under the stamp Act, and (2) that the law requires the original to be placed on the record, and (3) that it is withdrawn.[47] The present Article is intended to authorise the levy of a fee of annas eight in the case contemplated under O. 13, R. 9, Civil Procedure Code, 1908.[48]

Number.		Proper Fee.
9. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report or the like, taken out of any Civil or Criminal or Revenue Court or Office, or from the office of any Chief Officer charged with the executive administration of a Division.	For every three hundred and sixty words or fraction of three hundred and sixty words.	Eight annas. [Twelve annas in Bihar and Orissa.]

(44) 26 Bom. 522; followed in 27 Bom. 150; 26 Bom. 522 (526).

(45) *Krishnaji* v. *Dulaba*, per *Birdwood, J.* (1891) 15 Bom. 687; cited in 26 Bom. 522 (525) per *Candy, J.*

(46) 9 P.R. 1918=13 P.W.R. 1917=43 I.C. 383.

(47) *Ibid.* 9 P.R. 1918, *supra.*

(48) *Ibid.* 9 P.R. 1918, *supra.*

Comments.

791. AMENDMENT.—The fee under this Article has been enhanced in Bihar and Orissa, by Act II of 1922.

792. SCOPE.—This Article supplements Arts. 6 and 7, and is applicable where the case is not provided for in the above articles, or in any other specific provision in the Act.

793. The expression "JUDICIAL PROCEEDING" is now here defined in the Act; but as defined in the Criminal Procedure Code, the power to take evidence on oath is the characteristic test of judicial proceeding. This definition of a "judicial proceeding" in S. 4 (*m*) of the Criminal Procedure Code is not exhaustive. It *includes* execution proceedings.[49]

794. THE DISTINCTION BETWEEN A JUDICIAL AND ADMINISTRATIVE INQUIRY consists in the object to which an inquiry is pointed. An inquiry is judicial if the object of it is to determine a jural relation between one person and another, or a group of persons; or between him and the community generally.[50] A sub-registrar making an inquiry to satisfy himself whether he is justified in registering the document presented for that purpose, or the Registrar also in determining an appeal preferred against the decision of the sub-registrar on that point, even if he takes evidence, does not act as a Court, and no judicial function is exercised.[1]

795. REVENUE ORDERS.—Copies of surveyor's village plans, from the Revenue Courts in Bengal are to be supplied at one rupee and six annas per plan, but the rate may be increased at the discretion of Collector, in intricate plans, within a limit of two rupees and twelve annas per plan. (*Vide* N. 9628, Mis. C, dated 1st October, 1923, *Calcutta Gazette, Part I, p.* 1461).[2]

Copies of orders and proceedings of executive officers issued on plain papers to parties in the ordinary course of administration, must if filed later on by parties in support of their petitions and applications are to be treated as "copies" within the meaning of this Article. (*Proceedings of Madras Board of Revenue,* No. 342, dated 7th November, 1898. Standing order No. 119).[3]

796. **CERTIFIED COPIES UNDER BIRTH, DEATH AND REGISTRATION ACTS.**—Under Art. 24, of Indian Stamp Act, II of 1899, certified copy or extract from any register relating to Births, Baptisms, namings, dedications, marriages, divorces, deaths or burials, as also copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office, or for any public purpose, is exempt

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(49) *Bahadur* v. *Eradutullah Mallick,* 37 Cal. 642=14 C.W.N. 799 =12 C.L.J. 45=6 I.C. 801=11 Cr.L.J. 407 (F.B.).

(50) *Queen Empress* v. *Tulja,* 12 Bom. 36 (42, 43).

(1) *Ibid.* 12 Bom. 36 (43).

(2) *Basus'* Court-Fees Act, p. 303.

(3) *Satyamurthi's* Court-Fees Act, p. 400.

from stamp duty. Art. 24 of the Stamp Act does not apply to such copies as are referred to in Ss. 141, 141-A and 142-A (O. 8, Rr. 4, 5, 7), Civil Procedure Code, for they are not certified at the time they are furnished by or by the order of any public officer, and the subsequent certificate by the Court or its officer, under S. 62, would not bring them within it.[4] It might be otherwise, however[5] with a copy falling under O. 13, R. 9, Civil Procedure Code, which when delivered must be certified; and which, it is presumed, would be chargeable under the Court-Fees Act, Art. 8. Uncertified copies of municipal records, when required for private use need no stamp.[6] Under the Indian Stamp Act rules 1925, dated 5th May, 1925, R. 17 (*c*) copies of maps or plans and printed copies certified to be true copies shall be stamped with Court-fees stamps.[7]

797. SEARCHING FEES.—There is no provision of law, and there is nothing in the Civil Rules of Practice, or in any rule which governs the procedure in a Civil Court, authorizing the levy of search-fees for supplying copies to litigants. When an application is made, all that is required by a party is to supply stamps for copies and if the required number of copy stamps are supplied, it is the Court's duty to furnish copies asked for.[8] Consequently, order of a Sub-Collector directing search-fees to be paid by a party applying for copies of records in his Court was held to be without jurisdiction.[9]

Number.		Proper Fee.
10. [*Repealed by the Guardian and Wards Act, VIII of 1890, Sec. 2.*]		
11. Probate of a will or letters of administration with or without will annexed.	[When the amount or value of the property in respect of which the grant of probate or letters is made, exceeds one thousand rupees, but does not exceed ten thousand rupees.]	[Two per centum on such amount or value.]
	[When such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees.]	[Two and one-half percentum on such amount or value.]

(4) *Harichand* v. *Jivna Subhana*, 11 Bom. 526; *Kastur* v. *Fakiria*, 26 Bom. 522; *Nandubbai* v. *Gau*, 27 Bom. 154.
(5) *Kastur* v. *Fahiria*, 26 Bom. 522 (525).
(6) Madras Board's Proceedings No. 111, dated 5th April, 1898.
(7) *Basu's* Court-Fees Act, p. 303.
(8) *Raja Saheb of Vizianagram* v. *Sub-Collector of Berhampore*, 1928 Mad. 370 (1)=51 Mad. 599=108 I.C. 656.
(9) *Ibid.* 1928 Mad. 370 (1), *supra*.

Number.		Proper Fee.
	[When such amount or value exceeds fifty thousand rupees.] [Provided that when, after the grant of a certificate under the Succession Certificate Act, 1889, or any enactment repealed by that Act, or under the Regulation of the Bombay Code No. VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of fee paid in respect of the former grant.]	[Three per centum on such amount or value.]

Comments.

798. LOCAL AMENDMENTS.—This article has been locally amended in several Provinces, *vide* Bengal Act IV of 1922; Bihar and Orissa Act II of 1922; Bombay Act II of 1932; Madras Act V of 1922; and, United Provinces Act III of 1932, by which the fees have been enhanced. In Bengal, Bihar and Orissa, the taxable minimum has been raised from Rs. 1,000 to Rs. 2,000. (*Vide* Appendices, *infra,* for the Amendments.)

799. LEGISLATIVE CHANGE.—This article was substituted for the original Art. 11, by the Succession Certificate Act (Act VII of 1889). The items in column 2 were substituted by S. 2 (1) of the Court-Fees Amendment Act (Act VII of 1910).

800. SCOPE AND APPLICABILITY.—This article provides for the fee for the probate of a will or letters of administration, but the fee leviable on such an *application* for grant of probate or letters of administration is provided for in Sch. III, Art. 1, of the Act.[10] Under Art. 11 of Sch. I, duty is payable on the amount or value of the property in respect of which probate or letters of administration shall be granted if the amount or value of such property exceeds the minimum provided therein.[11]

(10) 15 W.R. 40.

(11) In the goods of *Abdool Aziz* (deceased), 23 Cal. 577.

The Court-fee under this article is payable only on the properties covered by the grant.[12]

801. **GRANT OF PROBATE, OR LETTERS OF ADMINISTRATION.**—As to the definition of a "probate," and a "will," see the Indian Succession Act (XXXIX of 1925), Ss. 2 (*f*), and 2 (*b*) and (*h*) : and as to whom probate shall be granted, see S. 222 of the same Act, and also part ix, dealing with the subject.

According to the definition, "probate" means not merely the copy of the grant of administration but also the copy of the will, of which probate has been granted.[13] A "province" for the purposes of the Indian Succession Act, includes any division of British India having a Court of the last resort; and where property is situate in different provinces, with varying rate of fees, the question of the determination of the value and the computation of the fee is to be decided under the provisions of S. 19-C *supra*.

802. **"VALUE OF THE PROPERTY"—value at date of application for grant of probate, etc.**—Probate duty, as distinguished from a succession duty, is a stamp duty payable on what is supposed to be the value of the property, the subject of the probate at the time it is granted.[14] The provisions relating to the grant of probate or letters of administration are to be found in the Probate and Administration Act, but the provisions relating to probate duty are to be found in the Court-Fees Act.[15] An application for probate has to state amongst other things, *first*, the amount of assets, which are likely to come to applicant's hand, and *secondly*, the amount of such assets in each Province, and the District Judges within whose jurisdiction such assets are.[16] Though the grant is in respect of all such assets which are likely to come into the executor's hands, still it has effect over the property situate in the province in which the grant is made.[17] The probate duty is payable literally under Art. 11 of the Court-Fees Act, *on the amount or value of the property in respect of which the grant of probate or letters of administration is made*, and not on the amount or value of the property affected by the grant of probate or letters of administration. By the express provision of Art. 11, Sch. I of the Act, probate duty is payable on "probate of a will, or letters of administration with or without the will annexed." This means that if the grant is made by the Court under S. 5 of the Probate and Administration Act, of a probate of a will or letters of administration with or without the will annexed, then probate duty is clearly payable on it, "and the Court-fees must be regulated by

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(12) 62 I.C. 513=1921 Pat. 206=6 Pat.L.J. 411=2 P.L.T. 683.

(13) *Delaney* v. *Rohamat Ali*, 32 Cal. 710.

(14) *Deputy Commissioner of Singhbhum* v. *Jagadish Chander*, 1921 Pat. 206=62 I.C. 513; also see 1 Bom. 118 (Market-value of annuity); and 6 N.-W.P. 214 (value of property subject to a charge is the value of equity of redemption).

(15) *Ibid.*

(16) *Ibid.*

(17) *Ibid.*

the value of the property at the time when the application was made to the Court under S. 5 of the (Probate and Administration) Act.''[18] The grant contemplated in Art. 11, Sch. I, of the Court-Fees Act is a grant made on an application under S. 62, and S. 64 of the Probate and Administration Act, that is to say, a grant made on an application to establish the will or the representative character of the applicant.[19] The grant under S. 5 does not pretend to establish either the will or the representative character of the applicant. It is merely an ancillary grant, giving efficacy to a grant already made by the Court on an application under S. 62 of the Act.[20] In view of the consideration (1) that the original application is required to be accompanied by a valuation of the whole estate, and (2) that the grant under S. 5 is merely an ancillary grant giving efficacy to the original grant over the estate in the province, *the effective date for the purposes of Court-fees is the date of the original application*[21] and not the date of the original grant.[22]

803. NETT AND NOT GROSS-VALUE IS TO BE CONSIDERED.— According to ALLAHABAD High Court, no duty is payable in respect of a grant of probate or letters of administration where the value of the estate, after making the deductions specified in Annexure B of Sch. III to the Court-Fees Act, is less than Rs. 1,000. The schedules have to be read with the Act. Under S. 19-I the petitioner for letters of administration must file a valuation in accordance with the third schedule, and the fee is to be paid ''*in accordance with such valuation.*'' The form of valuation as given by third schedule has reference to Annexures A and B, and the ''nett total'' as made after the deductions permissible in Annexure B.[23] The CALCUTTA High Court has arrived at the same conclusion, in an elaborate judgment by Sir Ashutosh Mookerjee, holding that on taking the sections of the Court-Fees Act as a whole, with a view to give effect to the legislative intent upon the particular matter, it is clear that the proper amount of Court-fee duty payable on an application for probate in respect of the estate left by a deceased person is to be calculated upon the nett value of the estate obtained by the deduction of the amount of the debts from the gross value of the estate.[24] The Lower Burma Chief Court has likewise held that the words ''the amount or value of the property refer to *nett value*; and where the nett value of

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(18) *Deputy Commissioner of Singhbhum* v. *Jagadish Chunder*, 1921 Pat. 206 (213)=62 I.C. 513.

(19) *Ibid.* 1921 Pat. 206 (214)=62 I.C. 513.

(20) *Ibid.*

(21) *Ibid.* 1921 Pat. 206 (216).

(22) *Ibid.*

(23) In the goods of *Mrs. E. E. W. Meik*, 46 I.C. 865=40 All. 279.

(24) In the goods of *Harriett Teviot Kerr*, 21 I.C. 502=18 C.L.J. 308=18 C.W.N. 121; and in the goods of *Quininborough*, 30 I.C. 958=20 C.W.N. 591=22 C.L.J. 160; also see and *cf. The Collector of Maladah* v. *Nirade Kamini*, 15 I.C. 621=17 C.W.N. 21; not followed 18 W.R. 153 =9 B.L.R. 30.

estate is less than Rs. 1,000, no fee is chargeable on probate or letters.[25]

804. PROBATE IN CASES NOT GOVERNED BY THE INDIAN SUCCESSION ACT.—In cases not governed by the Indian Succession Act, probates and letters of administration granted by the High Court of Bombay in respect of Hindus, Mahomedans and other persons not usually designated as British subjects take effect only, and can only be granted, for the purpose of recovering debts and securing debtors paying the same, except so far as is otherwise provided in Act XXVII of 1860; and probate duty is only payable on the amount of such debts. Cutchi Memons are not Hindus within the meaning of S. 2 of the Hindu Wills Act (XXI of 1870); and, therefore, probate to take effect throughout India cannot be granted in the case of a will of a Cutchi Memon testator, to whom Mahomedan Law is to be applied.[26]

805. "PROPERTY" HELD IN TRUST.—The words of the Act as it stood, taken literally, were held to cover trust property, as well as property held beneficially by the deceased, but stamp duty is now excluded by notification in respect of trust property which was vested in the deceased as a trustee, and to which his executor or administrator can have no title as such, and to effect the transfer of which to new trustees is the sole purpose for which it is sought to obtain probate or letters of administration.[27] "Property" for the purpose of this article includes all kinds of property of a testator, situated within British India, in which the deceased has a beneficial interest or a disposing power.

806. PROPERTY IN DIFFERENT PLACES.—The Bengal Court-Fees Amendment Act, prescribes a higher scale of fees in the Bengal Province, if the grant is made in that province, in respect of property wherever situate, *i.e.*, within or without that province.[28] Where the assets left by a testator are situate in more than one province, the grant of probate in respect of all the assets, which are likely to come to the executor's hands, shall, under S. 59 of the Probate and Administration Act, have effect only over the property situate in the province in which the probate is granted.[29] Where the two districts in which deceased's property was situate were in two different provinces, but under the same Government and legislature for fiscal purposes, probate duty was held payable on the entire estate situate in both districts when probate was

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(25) In re *Chin Ah Yang*, 24 I.C. 823; also see in re *Will of Thaddens*, 24 I.C. 793; following 21 I.C. 502, *supra*.

(26) In the matter of *Haji Ismail Haji Abdulla*, 6 Bom. 452.

(27) See and *cf.* in the goods of *Beresford* and *Maddock*, 15 W.R. 456 =7 B.L.R. 57; and *The Collector of Khaira* v. *Chuni Lal Hari Lal*, 29 Bom. 161 (167)=6 Bom.L.R. 652; also see Annexure B, in the form set out in Schedule III of the Court-Fees Act and see *Deputy Commissioner of Singhbhum* v. *Jagadish Chandra*, 62 I.C. 513=6 P.L.R. 411=2 P.L.T. 683= 1921 Pat. 206.

(28) In the goods of *G. T. Williams*, 75 I.C. 466=50 Cal. 597=27 C. W.N. 812; 1924 Cal. 115.

(29) 62 I.C. 513=1921 Pat. 206, *supra*.

granted by the District Judge in one district.[30] Where the testator, a member of the firm at Calcutta, and a firm in England, died in England, leaving a will, appointing a person in England, and a person in Calcutta, as his executors; and, the duty in respect of the deceased's share in the Calcutta firm was paid on the probate obtained in England, but the other executor having to take out probate in India, was held not entitled to exemption from probate duty payable under the Court-Fees Act, in respect of the properties in India.[31]

807..."**PROPERTY,**" **UNDER LITIGATION.**—Under Art. 11 of Sch. I, duty is payable on the amount or value of the property in respect of which probate of letters shall be granted, exceeding the prescribed minimum; but in case the right to property aforesaid is the subject of a suit, and the property has not been reduced to possession at the time of taking out probate, it is permissible to declare the value of that property as not exceeding Rs. 1,000; the value of a mere right of action being of course impossible to determine.[32] Probate in such cases may be issued without payment of stamp duty (it being declared at under Rs. 1,000) but the petitioner would be ordered, on the termination of the litigation to file in Court a statement showing its result.[33] A judgment-debt due to the estate of the deceased may be valued by the executor at a fair amount, considering the chances of recovery, and duty should be paid on such value only.[34]

808. **JOINT-PROPERTY OF HUSBAND AND WIFE.**—Under the Burmese Buddhist Law a widow who owns half of the joint-property during her husband's lifetime inherits this half as her own when he dies. Consequently, where letters of administration to the estate of a deceased Burman are granted to his widow, she has only to pay Court-fees on what she takes as administratrix, namely, on what was her husband's half share.[35] Where a European German subject held common property with his wife, under *Code Napolean, ad valorem* Court-fee was held payable on his half-share, after his death, on probate obtained by the wife as a survivor.[36]

809. **POWER OF APPOINTMENT.**—*Ad valorem* duty has been held not payable in respect of personal property appointed by will under general powers of appointment.[37] Where the will

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(30) 32 I.C. 513=1921 Pat. 206, *supra.*

(31) In the goods of *Gladstone*, deceased, 1 Cal. 168.

(32) In the goods of *Abdul Aziz*, deceased, 23 Cal. 577.

(33) *Saldanha* v. *The Secretary of State*, 24 Mad. 241.

(34) In re *Radhibai Rupji Sundarji*, 55 Bom. 844=1931 Bom. 419.

(35) In the estate of *U Po Khin*, 50 I.C. 545=11 Bur.L.T. 258; citing *Ma Sein Ton* v. *Ma Son*, 30 I.C. 585=8 Bur.L.T. 203 (212); and *Ma Nyo* v. *Ma Yank*, 4 L.B.R. 256 (259).

(36) 20 Cal. 575.

(37) In the goods of *Julia Oram*, 21 W.R. 245=12 B.L.R. App. 21; also see in the goods of *George*, 15 W.R. 457, notes 6 B.L.R. App. 138; *cf.* in re *Lakshminarayana*, 25 Mad. 515; also see in the goods of *Maurice Saleh Manasseh*, 1933 Cal. 924.

by husband conferred general power of appointment over a fund on his wife, and the probate duty was paid on the principal to be invested on interest as directed by the will, and the widow died after exercising the power of appointment, and made a will, her executor on applying for grant of a probate of her will was held liable to pay probate duty, on the ground that the power of appointment created by the will was "property" within the meaning of Art. 11 of the Court-Fees Act. This view has been dissented from in a recent Calcutta case, In the goods of *Maurice Saleh Manasseh*.[38]

810. PROVIDENT FUNDS.—A sum of money in a private provident fund cannot be deemed to vest in the nominee or the widow, or the children of the depositor.[39] The fiduciary relationship does not make the company a "trustee" for the dependant, or the nominee of the depositor, who can only take by succession.[40] But, the NAGPUR Commissioner's Courts adopts a different view, holding that a sum to the credit of the deceased in a Railway Provident Fund, did not require probate duty as this passed to the nominee, even if there is no administration.[41] The employer company cannot insist upon the nominee taking out letters of administration; and where the nominee applies for letters, the amount of the Provident Fund is not an asset liable to probate duty.[42] A Full Bench of the OUDH Chief Court has held that money standing to the credit of a deceased person in Railway Provident Fund Deposit is personal property, that is an asset of the deceased, and if such sum exceeds rupees one thousand it is liable to assessment under Sch. I, Art. 11.[43] The true nature of a Provident Fund has been stated by Rankin, C. J., in the case of *C. D. M. Hindley* v. *Joynarain Marwari*.[44]

811. HINDU JOINT FAMILY PROPERTY.—The CONFLICT OF VIEWS on the question of exemption of the undivided share of a deceased coparcener in the property of a Hindu joint family under the Mitakshara Law, which passes the interest of deceased, by survivorship, on his death to his other coparceners, has been noticed in detail in the comments under S. 19-D, *ante*. The CALCUTTA[45] and BOMBAY,[46] view is in favour of exemption in

(38) In re *Lakshminarayana Ammal*, deceased, 25 Mad. 515; (Diss. in the goods of *George*, 15 W.R. 457=6 B.L.R. App. 138); compare 1933 Cal. 924.

(39) 6 Rang. 558=1928 Rang. 312=116 I.C. 467.

(40) *Ibid.*

(41) 82 I.C. 128=1925 Nag. 108 (1) (*Agnes Mary* v. *James William*); also see in re *Digambar*, 1926 Nag. 306.

(42) *Secretary of State* v. *Mary Murray*, 1930 Cal. 252=123 I.C. 646=33 C.W.N. 1148.

(43) 1930 Oudh 145=7 O.W.N. 324=122 I.C. 322=5 Luck. 552.

(44) (1919) 46 Cal. 962=54 I.C. 439=24 C.W.N. 288.

(45) In the goods of *Pokurmall Aggurwallah*, 23 Cal. 980=1 C.W.N. 31 (property held trust property in hands of deceased).

(46) *The Collector of Kaira* v. *Chuni Lal*, 29 Bom. 161 (*Held*, that a member of joint Hindu family had no beneficial interest in any part of the joint estate; hence probate at instance of survivors is exempt from duty).

accordance with the long-continued practice of these High Courts on the Original Side. A conflicting view was taken in *Kasinath* v. *Gourava Bai*,[47] but this was overruled by the Full Bench decision in the case of *Keshavlal Puniyalal* v. *Collector of Ahmedahbad*,[48] where Shah, A. C. J., points out that under Hindu Law, a deceased testator has no beneficial interest left at the moment after his death. The opposite view is held by the MADRAS[49] High Court, followed by the PATNA[50] High Court, to the effect that the deceased's own share cannot be said to be held by him in trust at the moment before his death, though he may be holding his undivided son's share in that way.

812. It should be noticed that the concept of a joint family as laid down by their Lordships of the Privy Council in the leading case of *Appoovier* v. *Appoovier*, 11 M.I.A. 75 is that "according to the true notion of an undivided family in Hindu Law, no individual member of that family, whilst it remains undivided, can predicate of the joint and undivided property, that he, that particular member, has a certain definite share. The proceeds of undivided property must be brought, according to the theory of an undivided family, to the common chest or purse, and then dealt with according to the modes of enjoyment by the members of an undivided family".

813. EXEMPTIONS FROM PAYMENT OF DUTY.— (1) Under S. 8 of the Government Savings Bank Act, (Act V of 1893) a deposit of Rs. 1,000 is to be exempted from payment of Court-fee duty.

(2) The Court-fee stamp to be imposed on a certificate of administration ought not to be assessed on a valuation, including property absolutely denied by the applicants to belong to the intestate's estate until the contrary is proved.[1]

(3) Securities and shares transferred to a person, by the Receivers appointed *pendente lite*, pursuant to a compromise-decree passed by the High Court, have been held not to be exempt from prescribed duty.[2]

(4) Where the nett value of the estate, after deducting the debts due by the deceased falls below the minimum provided by

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(47) 39 Bom. 245 (The propounders of the will, are estopped *ex concessis* from alleging that the deceased had no beneficial interest).

(48) 1924 Bom. 228=48 Bom. 75=77 I.C. 749 (F.B.) (*Held*, that no Court-fee should be levied on the limited Letters of Administration sought by the son as to the shares belonging to the joint family that came to him on partition with his brother).

(49) In the matter of *Desa Manavala Chetti*, 33 Mad. 93=4 I.C. 1064=19 M.L.J. 591 (F.B.) (follows 11 B.L.R. 39=19 W.R. 230; and 20 Cal. 574); also see *Annapurnamma* v. *Atchuta Ramayya*, 100 I.C. 111=1927 Mad. 1101 (The deceased could use his share beneficially and have it placed at his disposal by partition).

(50) In re *Estate of Ram Kumar Prasad*, 58 I.C. 1007=5 P.L.J. 510 =1 P.L.T. 710.

(1) *Nittyo Kali Dabea* v. *Kedar Nauth*, 5 C.L.R. 368.

(2) In the goods of *Sreenauth Doss*, 20 W.R. 440.

law, *viz.*, Rs. 1,000, no Court-fee is payable on probate or letters of administration granted in respect of such estate.[3]

(5) Provident Fund money is exempted from probate and administration duty, as this passes to the nominee, even if there is no administration.[4] But this view is not held by all the High Courts.

(6) *Ad valorem* Court-fee is not payable under this article in respect of personal property in which a person has only a life interest with general and absolute powers of appointment.[5]

(7) There is no provision in the Court-Fees Act, authorizing exemption from payment of probate duty in respect of a claim supposed to be doubtful.[6] Even where exemption is claimed the proper procedure is to repay the Court-fee prescribed by the statute to the satisfaction of the Court and the certificate of the Registrar or Taxing officer must be produced to the Court with the application and affidavit of valuation.[7]

814. REMISSIONS OF FEES.—Under the rules framed under S. 35 of the Court-Fees Act, the following fees have been remitted:—

(*a*) The fees chargeable in respect of Indian probates and succession certificates on the share of a deceased member of a company formed under the Indian Companies Act, 1882 (now 1913) and registered in a branch register in the United Kingdom under the Indian Companies (Branch Register) Act, 1900, provided the member was at the date of his death domiciled elsewhere than in India; and

(*b*) the fees chargeable for probate and succession certificate for the first fifty thousand rupees of the estate of persons killed in or died of wounds inflicted in, or who die of disease contracted during the Great War, 1914 to 1919.

By G.O. No. 572, Law General, dated 20th February, 1926, and G.O. No. Mis. 3331, Law General, dated 3rd October, 1928, the Madras Government have remitted the fee for probate and succession certificate on the first fifty thousand rupees of the property of

(*a*) any person subject to the Naval Discipline Act, the Army Act, the Air Force Act, or the Indian Army Act, who is killed while on active service or dies of wounds, accidents, or disease during such service,

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(3) See para. 98, above; 46 I.C. 865=40 All. 279; 21 I.C. 502; 30 I.C. 958; also see 15 I.C. 621; 24 I.C. 823 and 24 I.C. 793.

(4) See para. 105; 82 I.C. 128=1925 Nag. 108 (1); also see 1926 Nag. 306; but compare, 1930 Oudh 145=122 I.C. 322 (F.B.) and 116 I.C. 467=1928 Rang 312=6 Rang. 558.

(5) See para. 104; 21 W.R. 245; 15 W.R. 457, note; *cf.* 25 Mad. 515.

(6) In the goods of *E. L. Beake* deceased, 13 B.L.R. App. 24.

(7) In the goods of *Duda Bibi*, 26 Cal. 407=3 C.W.N. 372; also see in re *Bhubaneshwar Trigunait*, 52 Cal. 871=95 I.C. 529=1925 Cal. 1201 (claims for exemption are to be dealt with by the Taxing Officer, and not by the clerk or officer whose duty it is to see that Court-fees are paid).

(*b*) any Government servant (Civil or Military) dying of wounds or injuries inflicted during the performance of official duties.

815. APPEAL.—The Court-fee payable on a memorandum of appeal against an order in probate proceedings is governed by Art. 1 of Sch. II of the Court-Fees Act. Therefore, an *ad valorem* stamp-duty on the value of the estate need not be levied in such cases.[8] An appeal against an order granting or refusing to grant probate is liable to Court-fee under Sch. II, Art. 17 (4), as the subject-matter does not admit of valuation.[9]

Number.		Proper Fee.
12. Certificate under the Succession Certificate Act, VII of 1889.	In any case ..	Two per centum on the amount or value of any debt or security specified in the certificate under section 8 of the Act, and three per centum on the amount or value of any debt or security to which the certificate is extended under S. 10 of the Act. NOTES.—(1) The amount of a debt is its amount, including interest, on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained. (2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act; and where such a power has been so conferred whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes,

(8) *Rodrigues* v. *Mathias*, 9 I.C. 538=21 M.L.J. 481=1911 M.W.N. 237=9 M.L.T. 314.

(9) *Miss Mount Stephens* v. *Orme*, 35 All. 448=22 I.C. 98.

Number.		Proper Fee.
		the value of the security is its market value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.

Comments.

816. AMENDMENT.—This article and Art. 12-A have been substituted, for the original Art. 12, by S. 13, Succession Certificate Act, 1889 (Act VII of 1889). The reference to the Succession Certificate Act has now to be read as referring to Act XXXIX of 1925 (The Indian Succession Act, 1925) as all but S. 13 now stands repealed.

817. LOCAL AMENDMENTS.—The succession certificate fee has been enhanced in several provinces, by Amending Acts, *vide* Act IV of 1922 (Bengal); Act II of 1922 (Bihar and Orissa); Act II of 1932 (Bombay); Act V of 1922 (Madras), and Act III of 1932, (United Provinces), as given in Appendix.

818. SCOPE.—This article provides *ad valorem* fee for a succession certificate, calculated at the rate of 2 per cent. on the exact amount or value of any debts and securities specified in the certificate under S. 8 of Act VII of 1889 (now Act XXXIX of 1925, S. 374), and at the rate of 3 per cent. on the amount or value of any debt or security to which the certificate is extended under the Act. (S. 376, Act XXXIX of 1925).

Note 1, explains that "the amount of the debt" is the amount due including interest till date of application. Note 2 explains that "the value of the security" is its market-value, irrespective of its face-value. A succession certificate for the receiving of interest or dividends only from the assets is chargeable on the value of the debt or security, just as a certificate for the negotiation or transfer of the security.

819. GRANT OF CERTIFICATE.—Succession certificates are now dealt with in Part X of the Indian Succession Act, 1925, commencing from S. 370, which corresponds to S. 1 (iv) of Act VII of 1889. A succession certificate shall not be granted with respect to any debt or security for which a probate or letter of administration is necessary to establish a representative title before the Court. In cases where probates or letters of administration are not essential, a certificate can apparently be granted. For instance, persons who are not governed by the Hindu Wills Act (=S. 57 of the Indian Succession Act, 1925), are not required to

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take out probate or letters of administration in respect of a will. These persons can apply for a succession certificate, even though there is a will, and the application cannot be refused merely because the applicant might have applied for a probate instead of a certificate.[10] It has been held, by the Calcutta High Court, in *Ramesh* v. *Kamini*, that even though there is a will, the heir of the testator, who does not claim under the will, may apply for a succession certificate,[11] in respect of that portion of the property in which a contingent interest was given to his widow, and widowed daughters in law; but the certificate could not be issued in respect of portion of property in which a present interest was granted by the will to the daughter.[12]

820. SECURITY.—The term security has been defined in S. 370 (ii) of the Indian Succession Act.[13] A fixed deposit in a Bank is not a security within the meaning of S. 370 (ii), Indian Succession Act.[14]

821. SECTION 8, ACT VII OF 1889.—The reference to S. 8, Act VII of 1889, is now to be taken to S. 374, Indian Succession Act, which provides for the contents of certificate.

A certificate when granted should be both for the principal debt and interest. A certificate granted to a Hindu widow to realize interest only was held *ultra vires*,[15] and, a certificate granted to receive only the interest on the deposit in a bank left by the deceased, would give cause of action to the widow to maintain a suit for a declaration that she could withdraw the money.[16]

822. SECTION 10, ACT VII OF 1889.—This section referred to "extension of certificate" which is now provided by S. 376 of the Indian Succession Act, 1925. The District Judge

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(10) *Rattan Singh* v. *Chandhari Raj Singh*, 2 L.L.J. 578; *Jamna* v. *Daulat*, 2 A.L.J. 126; *Dade Liladhar* v. *Bai Parvati*, 18 Bom. 608; *Kalidas* v. *Baihmali*, 16 Bom. 712; *Achutan* v. *Cheriotti*, 22 Mad. 9 (10).

(11) 39 I.C. 525.

(12) *Ibid.*

(13) Read Section 370 (2):—"For the purposes of the *part*, 'security' means:

(*a*) any promissory note, debenture, stock or other security of the Government of India or of a Local Government;

(*b*) any bond, debenture, or annuity charged by Act of Parliament on the Revenues of India;

(*c*) any stock or debenture of, or share in, a company or other incorporated institution;

(*d*) any debenture or other security for money issued by, or on behalf of, a local authority;

(*e*) any other security which the Governor-General in Council may, by notification in the *Gazette of India*, declare to be a security for the purposes of this part.

(14) *Gulraji* v. *Jagdeo*, 28 All. 477.

(15) *Jai Dei* v. *Banwari Lal*, 19 I.C. 447; followed *Shib Dei* v. *Ajudhia Pershad*, 9 I.C. 571.

(16) *Keshoram Singh* v. *Ram Kunwar*, 5 I.C. 590=32 All. 316.

can extend a certificate only on the application of the certificate holder, and not of any other person (*e.g.*, an assignee).[17]

823. DEBT IN PART SATISFIED.—A certificate cannot be granted to collect a part only of a debt; but the Act contemplates that a certificate may be granted for the collection of any one debt, or of more debts than one, without obtaining a certificate for the collection of all the debts due to the deceased. Accordingly, where a Muhammadan lady, who was entitled to a certain sum as her dower, died, but her son's share by inheritance was discharged, and her husband's share was held by him in satisfaction of his own share in the inheritance, the duty on a succession certificate applied for by the father of the deceased was payable on the balance of the dower debt after making the above deductions.[18]

824. METHOD OF CALCULATION.—(1) Where the value of the property in respect of which a succession certificate is sought exceeds the prescribed minimum, the stamp duty is to be calculated not on the excess over Rs. 1,000, but on the whole amount of the debt or security.[19]

(2) The Court-fee stamp to be imposed on a certificate of administration ought not to be assessed on a valuation, including property absolutely denied by the applicants to belong to the intestate's estate until the contrary be proved.[20]

825. COURT-FEE ON FRESH SUCCESSION CERTIFICATE.—In cases of grant of probate or letters of administration the Government receives from the applicant a tax upon the whole of the value of the estate passing on the death of the deceased, and, therefore, the full tax having once been paid on the value of the estate, the issue of a further grant in respect of the same property, or a portion thereof is made without charging any further duty. This analogy is however inapplicable to the case of a succession certificate, where the duty is paid to the crown only in respect of such debts as the applicant requires the certificate to enforce or collect, and no duty is payable to the Crown on the whole value of the estate. Under terms of S. 14 of the Succession Certificate Act (now S. 379, Act XXXIX of 1925), "*every application* for a certificate or for the extension of a certificate" requires the "deposit of a sum equal to the fee payable under the Court-Fees Act in respect of the certificate of extension applied for." Consequently, it was held that further Court-fee under the succession Court-fee had to be paid by a Hindu daughter on an application for a certificate under the Act in succession to her mother, in respect of her father's properties for which the mother had previously obtained a succession certificate on payment of the prescribed Court-fees.[21]

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(17) *Raja of Kala Hasti* v. *Rama Rayaniengar*, 3 I.C. 84=19 M.L.J. 456.

(18) *Muhammad Ali Khan* v. *Puttan Bibi*, 19 All. 129=16 A.W.N. (1896) 198.

(19) 5 Mad. H.C.R. App. 45.

(20) *Nittyo Kali Dabea* v. *Kedaur Nath*, 5 C.L.R. 368.

(21) In re *Sarojhashini Debi*, 36 I.C. 125=20 C.W.N. 1125.

826. **POWER TO COMPEL GRANTEE TO RENDER ACCOUNTS.**—It is open to Court, but not to third parties to compel grantee to render accounts by filing a statement of all monies recovered on realised by him under such certificate.[22]

827. **LOCAL EXEMPTIONS.**—*Vide Appendix* Act IV of 1922, Bengal; Act II of 1922, Bihar and Orissa and Act II of 1932, Bombay: *also see* commentary under Art. 11, above.

828. **EXEMPTION—Railway Provident Fund.**—Money standing to the credit of a deceased person in a Railway Provident Fund passes to his nominee, and does not form a proper asset of the estate of the deceased. It is therefore, exempt from the Court-fees payable for a succession certificate under this Article.[23]

Number.		Proper Fee.
12-A. Certificate under the Regulation of the Bombay Code, No. VIII of 1827.	(1) As regards debts and securities.	The same fee as would be payable in respect of a certificate under the Succession Certificate Act, 1889, or in respect of an extension of such a certificate, as the case may be.
	(2) As regards other property in respect of which the certificate is granted—	
	When the amount or value of such property exceeds one thousand rupees, but does not exceed ten thousand rupees;	Two per centum on so much of the amount or value.
	When such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees;	Two and half per centum on such amount or value.
	When such amount or value exceeds fifty thousand rupees.	Three per centum on such amount or value.

(22) *Bawa Sant Ram* v. *Jas Mal*, 94 P.R. 1887.

(23) In re *Digambar*, 92 I.C. 525=1926 Nag. 306; also see 82 I.C. 128=1925 Nag. 108 (1); [but compare 1930 Oudh 145=122 I.C. 322 (F. B.); and 116 I.C. 467=1928 Rang. 312=6 Rang. 558]; also see *Secretary of State* v. *Mary Murray*, 1930 Cal. 252=123 I.C. 646=33 C.W.N. 1148 (See para. 105, *ante*).

Commentary.

829. **AMENDMENT.**—This Article was put in by S. 13 Act VII of 1889, and columns 2 and 3 thereof were later on substituted by Court-Fees Amendment Act VII of 1910, S. 2 (ii).

This article evidently applies to the Bombay Presidency, but the Bombay Act III of 1926, as amended by Act II of 1932 has the following substituted Art. 12-A now locally in force:—

"12-A. Certificate under Bombay Regulation VIII of 1827."	"The fee leviable in the case of a Probate (Art. II) on the amount or value of the property in respect of which the certificate is granted."

Vide, Appendix, Act II of 1932, Bombay. This article is omitted in Bihar and Orissa.

Number.		Proper Fee.
13. Application to the [High Court of Judicature at Lahore] for the exercise of its jurisdiction under section 44 of the Punjab Courts Act, 1918, [or to the Court of the Financial Commissioner of the Punjab for the exercise of its revisional jurisdiction under S. 84 of the Punjab Tenancy Act, 1887].	When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees.	Two rupees.
	When such amount or value exceeds twenty-five rupees.	The fee leviable on a memorandum of appeal.

830. **LEGISLATIVE CHANGES.**—(1) This article was inserted by the Punjab Courts Act, XVIII of 1894, S. 71, and amended by the Punjab Courts Act, 1899 (XXV of 1899), S. 6.

(2) The words "or to the Court of the Financial.....the Punjab Tenancy Act, 1887," were added by S. 1 of the Court-Fees Amendment Act IX of 1900 but this Act has been repealed by Act XVIII of 1928.

(3) The words "High Court of Judicature at Lahore" were substituted for the words "Chief Court in the Punjab" by the Repealing and Amending Act, XVIII of 1919, S. 2, and schedule to that Act.

(4) This article was repealed by the Punjab Courts Amendment Act, 1912, so far as it affected the Punjab and North-

West Frontier Province, but has been re-enacted by Punjab Act VII of 1922, S. 6, as amended by Punjab Acts I and VI of 1926, and applied to both the areas in its present form.

(5) *North-West Frontier Provinces.* The fees provided under this articles govern similar proceedings in the North-West Frontier Provinces, under S. 85 (1) of the North-West Frontier Province Law and Justice Regulation VII of 1901.

(6) This article is omitted in Bihar and Orissa.

831. REVISION APPLICATIONS.—An application for revision against an order rejecting objections to award, and passing a decree in accordance with it is chargeable with *ad valorem* Court-fee under Art. 13, Sch. I of the Act, when the subject-matter of the dispute exceeds Rs. 25. The fact that no decree was framed at the date of making the application would not affect the question of Court-fee.[24] A revision petition from an order filing or refusing to file an award, requires a Court-fee of Rs. 4 only where the subject-matter exceeds Rs. 25 in value.[25] An order refusing an application to set aside an award when the reference is in a suit pending before the Court is open to revision, and the necessary Court-fee for such a petition for revision is Rs. 4. The view taken in *Narpat Rai* v. *Devi Das, supra,* was not followed, relying upon the decision of the Taxing Officer (Broadway, J.), in the case of *Jaswant Singh* v. *Sunder Singh,* holding that the Court-fee was payable in such cases as on a revision from an order not having the force of decree.[26] The order refusing the application on which a judgment was pronounced by the Court, is quite distinct from the judgment pronounced by the Court.[27]

Number.		Proper Fee.
14. Application to the (High Court of Judicature at Rangoon) for the exercise of its revisional jurisdiction under S. 622 of the Code of Civil Procedure or S. 25 of the Provincial Small Cause Courts Act, 1887, (or S. 25 of the Rangoon Small Cause Court Act 1920).	When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees.	Two rupees.
	When such amount or value exceeds twenty-five rupees.	The fee leviable on a memorandum of appeal.

(24) *Narpat Rai* v. *Devi Das,* 9 I.C. 388=4 P.L.R. 1911; followed in *Mathews* v. *Singleton Benda & Co.,* 108 I.C. 382=1928 notes 70 (*a*).

(25) *Kanhayalal Sitaram* v. *Daulat Ram Naubat Rai,* 110 I.C. 302=1929 Lah. 367.

(26) *Harbbajan Singh Jai Ram Singh* v. *Kalumal Basheshamath,* 111 I. C. 145=1929 Lah. 369.

(27) *Ibid.*

Comments.

832. AMENDMENTS.—By letters patent, dated 11th November, 1922, A High Court of Judicature was established at Rangoon for these portions of the Provinces of Burma that were within the limits of the jurisdiction of the Chief Court of Lower Burma, and of the Judicial Commissioner thereof, and the Judicial Commissioner of the Upper Burma.

The reference in Art. 14, to S. 622, Civil Procedure Code (1882), is by virtue of S. 158 of the new Code, to be taken to mean the corresponding provision in S. 115, of the present Civil Procedure Code, (Act V of 1908).

Number.		Proper Fee.
*15. [*Repealed.*]		

Table of rates ad valorem *fees leviable on the institution of suits.*

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
..	5	0 6	190	200	15 0
5	10	0 12	200	210	15 12
10	15	1 2	210	220	16 8
15	20	1 8	220	230	17 4
20	25	1 14	230	240	18 0
25	30	2 4	240	250	18 12
30	35	2 10	250	260	19 8
35	40	3 0	260	270	20 4
40	45	3 6	270	280	21 0
45	50	3 12	280	290	21 12
50	55	4 2	290	300	22 8
55	60	4 8	300	310	23 4
60	65	4 14	310	320	24 0
65	70	5 4	320	330	24 12
70	75	5 10	330	340	25 8
75	80	6 0	340	850	26 4
80	85	6 6	350	360	27 0
85	90	6 12	360	370	27 12
90	95	7 2	370	380	28 8
95	100	7 8	380	390	29 4
100	110	8 4	390	400	30 0
110	120	9 0	400	410	30 12
120	130	9 12	410	420	31 8
130	140	10 8	420	430	32 4
140	150	11 4	430	440	33 0
150	160	12 0	440	450	33 12
160	170	12 12	450	460	34 8
170	180	13 8	460	470	35 4
180	190	14 4			

*Art. 15 was repealed by Act XI of 1923, Sch. II.

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
470	480	36 0	1,100	1,200	85 0
480	490	36 12	1,200	1,300	90 0
490	500	37 8	1,300	1,400	95 0
500	510	38 4	1,400	1,500	100 0
510	520	39 0	1,500	1,600	105 0
520	530	39 12	1,600	1,700	110 0
530	540	40 8	1,700	1,800	115 0
540	550	41 4	1,800	1,900	120 0
550	560	42 0	1,900	2,000	125 0
560	570	42 12	2,000	2,100	130 0
570	580	43 8	2,100	2,200	135 0
580	590	44 4	2,200	2,300	140 0
590	600	45 0	2,300	2,400	145 0
600	610	45 12	2,400	2,500	150 0
610	620	46 8	2,500	2,600	155 0
620	30	47 4	2,600	2,700	160 0
630	640	48 0	3,700	2,800	165 0
640	650	48 12	2,800	2,900	170 0
650	660	49 8	2,900	3,000	175 0
660	670	50 4	3,000	3,100	180 0
670	680	51 0	3,100	3,200	185 0
680	690	51 12	3,200	3,300	190 0
690	700	52 8	3,300	3,400	195 0
700	710	53 4	3,400	3,500	200 0
710	720	54 0	3,500	3,600	205 0
720	730	54 12	3,600	3,700	210 0
730	740	55 8	3,700	3,800	215 0
740	750	56 4	3,800	3,900	220 0
750	760	57 0	3,900	4,000	225 0
760	770	57 12	4,000	4,100	230 0
770	780	58 8	4,100	4,200	235 0
780	790	59 4	4,200	4,300	240 0
790	800	60 0	4,300	4,400	245 0
800	810	60 12	4,400	4,500	250 0
810	820	61 8	4,500	4,600	255 0
820	830	62 4	4,600	4,700	260 0
830	840	63 0	4,700	4,800	265 0
840	850	63 12	4,800	4,900	270 0
850	860	64 8	4,900	5,000	275 0
860	870	65 4	5,000	5,250	285 0
870	880	66 0	5,250	5,500	295 0
880	890	66 12	5,500	5,750	305 0
890	900	67 8	5,750	6,000	315 0
900	910	68 4	6,000	6,250	325 0
910	920	69 0	6,250	6,500	335 0
920	930	69 12	6,500	6,750	345 0
930	940	70 8	6,750	7,000	355 0
940	950	71 4	7,000	7,250	365 0
950	960	72 0	7,250	7,500	375 0
960	970	72 12	7,500	7,750	385 0
970	980	73 8	7,750	8,000	395 0
980	990	74 4	8,000	8,250	405 0
990	1,000	75 0	8,250	8,500	415 0
1,000	1,000	80 0	8,500	8,750	425 0
			8,750	9,000	435 0

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.	When the amount or value of the subject matter exceeds—	But does not exceed—	Proper Fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
9,000	9,250	445 0	1,25,000	1,30,000	1,575 0
9,250	9,500	455 0	1,30,000	1,35,000	1,600 0
9,500	9,750	465 0	1,35,000	1,40,000	1,625 0
9,750	10,000	475 0	1,40,000	1,45,000	1,650 0
10,000	10,500	490 0	1,45,000	1,50,000	1,675 0
10,500	11,000	505 0	1,50,000	1,55,000	1,700 0
11,000	11,500	520 0	1,55,000	1,60,000	1,725 0
11,500	12,000	535 0	1,60,000	1,65,000	1,750 0
12,000	12,500	550 0	1,65,000	1,70,000	1,775 0
12,500	13,000	565 0	1,70,000	1,75,000	1,800 0
13,000	13,500	580 0	1,75,000	1,80,000	1,825 0
13,500	14,000	595 0	1,80,000	1,85,000	1,850 0
14,000	14,500	610 0	1,85,000	1,90,000	1,875 0
14,500	15,000	625 0	1,90,000	1,95,000	1,900 0
15,000	15,500	640 0	1,95,000	2,00,000	1,925 0
15,500	16,000	655 0	2,00,000	2,05,000	1,950 0
16,000	16,500	670 0	2,05,000	2,10,000	1,975 0
16,500	17,000	685 0	2,10,000	2,15,000	2,000 0
17,000	17,500	700 0	2,15,000	2,20,000	2,025 0
17,500	18,000	715 0	2,20,000	2,25,000	2,050 0
18,000	18,500	730 0	2,25,000	2,30,000	2,075 0
18,500	19,000	745 0	2,30,000	2,35,000	2,100 0
19,000	19,500	760 0	2,35,000	2,40,000	2,125 0
19,500	20,000	775 0	2,40,000	2,45,000	2,150 0
20,000	21,000	795 0	2,45,000	2,50,000	2,175 0
21,000	22,000	815 0	2,50,000	2,55,000	2,200 6
22,000	23,000	835 0	2,55,000	2,60,000	2,225 0
23,000	24,000	855 0	2,60,000	2,65,000	2,250 0
24,000	25,000	875 0	2,65,000	2,70,000	2,275 0
25,000	26,000	895 0	2,70,000	2,75,000	2,300 0
26,000	27,000	915 0	2,75,000	2,80,000	2,325 0
27,000	28,000	935 0	2,80,000	2,85,000	2,350 0
28,000	29,000	955 0	2,85,000	2,90,000	2,375 0
29,000	30,000	975 0	2,90,000	2,95,000	2,400 0
30,000	32,000	995 0	2,95,000	3,00,000	2,425 0
32,000	34,000	1,015 0	3,00,000	3,05,000	2,450 0
34,000	36,000	1,035 0	3,05,000	3,10,000	2,475 0
36,000	38,000	1,055 0	3,10,000	3,15,000	2,500 0
38,000	40,000	1,075 0	3,15,000	3,20,000	2,525 0
40,000	42,000	1,095 0	3,20,000	3,25,000	2,550 0
42,000	44,000	1,115 0	3,25,000	3,30,000	2,575 0
44,000	46,000	1,135 0	3,30,000	3,35,000	2,600 0
46,000	48,000	1,155 0	3,35,000	3,40,000	2,625 0
48,000	50,000	1,175 0	3,40,000	3,45,000	2,650 0
50,000	55,000	1,200 0	3,45,000	3,50,000	2,675 0
55,000	60,000	1,225 0	3,50,000	3,55,000	2,700 0
60,000	65,000	1,250 0	3,55,000	3,60,000	2,725 0
65,000	70,000	1,275 0	3,60,000	3,65,000	2,750 0
70,000	75,000	1,300 0	3,65,000	3,70,000	2,775 0
75,000	80,000	1,325 0	3,70,000	3,75,000	2,800 0
80,000	85,000	1,350 0	3,75,000	3,80,000	2,825 0
85,000	90,000	1,375 0	3,80,000	3,85,000	2,850 0
90,000	95,000	1,400 0	3,85,000	3,90,000	2,875 0
95,000	1,00,000	1,425 0	3,90,000	3,95,000	2,900 0
1,00,000	1,05,000	1,450 0	3,95,000	4,00,000	2,925 0
1,05,000	1,10,000	1,475 0	4,00,000	4,05,000	2,950 0
1,10,000	1,15,000	1,500 0	4,05,000	4,10,000	2,975 0
1,15,000	1,20,000	1,525 0	4,01,000	..	3,000 0
1,20,000	1,25,000	1,550 0	..	..	..

SCHEDULE II.

FIXED FEES.

Number.		Proper Fee.
1. Application or petition.	(*a*) When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings;	One anna.
	or when presented to any officer of land-revenue by any person holding temporarily settled land under direct engagement with Government and when the subject-matter of the application or petition relates exclusively to such engagement;	
	or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improve or improvement;	
	or when presented to any Civil Court other than principal Civil Court of original jurisdiction or	

Number.		Proper Fee.
1. Application or petition—(*Contd.*)	to any Court of Small Causes constitutedunder Act XI of 1865, or under Act XVI of 1868, section 20, or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees; or when presented to any Civil, Criminal or Revenue Court, or to any Board or Executive Officer, for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, Board or officer, or of any other document on record in such Court or Office.	One anna.
	(*b*) When containing a complaint or charge of any offence other than an offence for which police-officers may, under the Criminal Procedure Code, arrest without warrant, and presented to any Criminal Court; or when presented to a Civil, Criminal or Revenue Court, or to a Collector, or any Revenue-officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity and not otherwise provided for by this Act;	Eight annas.

Number.		Proper Fee.
1. Application or petition—(*Contd.*)	or to deposit in Court revenue or rent;	Eight annas.
	or for determination by a Court of the amount of compensation to be paid by landlord to his tenant.	
	(*c*) When presented to a Chief Commissoner or other Chief Controlling Revenue or Executive Authority, or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a Division and not otherwise provided for by this Act.	One rupee.

833. AMENDMENTS.—(1) The words "*or to any Cantonment Magistrate sitting as a Court of Civil Judicature under Act III of* 1859", in the second column of the fourth paragraph in Cl. (*a*), have been REPEALED by the Cantonment Act, XIII of 1889.

(2) "*Act XI of* 1856," stands REPEALED, by the Provincial Small Cause Courts Act, IX of 1887:

(3) For "*Act XVI of* 1868, S. 20," read, Sec. 25 of the Bengal, Agra and Assam Civil Courts Act, XII of 1887.

834. PROVINCIAL AMENDMENTS.—This schedule has been amended in BENGAL, by Act IV of 1922; in BIHAR AND ORISSIA, by Act II of 1922; in BOMBAY, by Act II of 1923; in MADRAS, by Act V of 1922; in PUNJAB, by Act VII of 1922; and, in UNITED PROVINCES, by Act III of 1932, by which the fees have been enhanced as noted in the table *ante*:

Besides the ENHANCEMENT OF FEES, the following changes have been made locally in the various provinces by the abovementioned Amending Acts:—

(i) BENGAL.—In Cl. (*a*), the words "*or member of a District Board*" are inserted after the words "Municipal Commissioner".

In Cl. (*b*), a fee of "*One Rupee*" is prescribed for "*a complaint to a Criminal Court;*" and, a fee of "*annas twelve*" in the case of "*other applications.*"

(ii) BOMBAY.—By Act II of 1932, (Bombay), A NEW CLAUSE (*aa*) has been enacted, prescribing a fee of "annas four" on an "application to the Collector or other Revenue Officer for assistance under S. 86 of the Bombay Land Revenue Code."

THE FOURTH PARAGRAPH OF CL. (*a*) has been amended to include a petition to a Collector or other Officer of Revenue in relation to a suit or case, other than an application for assistance under S. 86, Bombay Code, the subject-matter of which is less than Rs. 50.

CLAUSE (*a*) has been amplified to include a petition for revision, and the fees have been enhanced according to the value of the subject-matter.

(iii) MADRAS.—In CL. (*b*) a fee of *one rupee* on a criminal complaint, and a fee of *annas twelve* for *other applications* has been prescribed.

CLAUSE (*d*) has been amplified to include a petition for revision, and the fees have been enhanced according to the value of the subject-matter.

(iv) PUNJAB.—CLAUSE (*d*) has been amplified to include petitions under the Indian Companies Act for winding up of a company and for taking other judicial action under the same Act. The fee has been fixed in the former case at Rs. 100, and in the latter at Rs. 5.

(v) UNITED PROVINCES.—CLAUSE (*d*) has been amended so as to include a petition for revision of judgment or order, to the Board of Revenue, a petition for winding up of a company under the Indian Companies Act to the High Court, and a petition for Revision to the High Court.

835. **SCOPE OF THE ARTICLE**.—This article applies to applications or petitions to the several authorities set out in column 2 of the article, when such applications or petitions are not otherwise specifically provided for in any of the succeeding articles, in the main Acts or local amendments effected by the various Provincial Legislatures.

This article is divided into four parts.

PART A, deals with two applications (requiring a fee of one anna) divided into five heads, *viz.*, applications to (1) Customs or Excise Department and to Magistrates in connection with dealings with Government; (2) any officer of Land Revenue, by a person holding temporarily settled land under direct engagement with Government; (3) any Municipal Commissioner, (or member of District Board) for conservancy or improvement; (4) any Civil, Criminal, or Revenue Court for a copy of judgment or order; (5) any Civil Court, Small Cause Court or Collector when the subject-matter is less than Rs. 50.

PART B, one rupee applications, is divided into four heads, *viz.*, complaints before Criminal Courts for non-cognizable

offences; applications made to Civil, Criminal or Revenue Courts not otherwise provided; (3) applications for deposit of rent or revenue; (4) applications for determining compensation to be paid to the tenant by the landlord.

PART C, one rupee applications, is divided into three heads, *viz.*, (1) Applications to Chief Commissioner or Divisional Commissioner, (2) applications to the Chief Controlling Revenue *or* Executive Authority; (3) Applications made to an officer charged with executive administration of a division.

PART D, Two rupee applications, applies to High Courts.

836. "APPLICATION".—The term "application" in this schedule must be construed to mean an application in writing.[1] The description of a document, delivered to the Court under S. 40 of the Code of Civil Procedure Code (1882) (O. 3, R. 5) is neither a petition nor an application within the meaning of this Act.[2] An application for refund of stamp duty need not be made in writing[3] but if made in writing, a Court-fee stamp would be necessary. However, a Government Notification No. 358, dated 10th September, 1921, remits fees previously chargeable under Art. 1 (*d*), (ii), of Sch. H of the Madras Court-Fees (Amendment) Act, 1922 (V of 1922) on applications or petitions presented to the High Court for refund of Court-fees paid under a mistake, or by misdirection.[4] A memorandum of objections filed under O. 41, R. 26 of the Civil Procedure Code, is not to be treated as a petition presented to the High Court.[5]

837. CLAUSE (*a*).—The following applications or petitions have been held to fall under Art. 1 (*a*), of Sch. II, of the Court-Fees Act.

(1) A petition for a NEW TRIAL in a Small Cause Court.[6]

(2) An application for a PROBATE OF A WILL, or Letters of Administration, comes under the provision made in Art. 1, Sch. II of the Act, for common applications and petitions.[7]

(3) An application to the High Court for CERTIFIED COPIES of the decree and judgment may be engrossed on a stamp of one-anna.[8] Similarly, application for certified copies of order of

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(1) 2 N.W.P. H.C.R. 418; also see *Lachmichand Hirachand* v. *Tukaram*, 16 Bom. 700.

(2) 5 B.H.C.R. A.C. 101.

(3) *Bhikoo Moolla*, 9 W.R. 357.

(4) *Satyamurthi's* Court-Fees Act, p. 434.

(5) *Damodar Prasad* v. *Masudan Singh*, 105 I.C. 108=1928 Pat. 85; also see *Mahomed Sahimullah* v. *Khalilulrahman*, 1932 All. 526=54 All. 465=140 I.C. 47=1932 A.L.J. 149.

(6) *Chotalal Jamnadas* v. *Bulakidas*, 7 B.H.C. A.C. 109.

(7) *Judoonath* v. *Bungsheedhur*, 15 W.R. 40.

(8) *Turif Biswas*, 7 W.R. 455; also see *Basantlal* v. *Commissioner of Income-tax*, 1932 Pat. 103.

Assistant Commissioner of Income-Tax should bear two annas Court-fee stamps.

(4) An appeal against an ORDER ABSOLUTE for foreclosure or sale, comes under Art. 1, Sch. II of the Act.[9]

(5) A Memorandum of appeal against an ORDER IN PROBATE PROCEEDINGS is governed by Art. 1, Sch. II of the Act.[10] But a contrary view was taken in an Allahabad case.[11]

(6) Applications for issue of FIRE ARMS LICENSES, are to be made on one anna Court-fee stamped paper.[12] But *vide* Appendix, for reductions and remissions.

(7) Applications or PETITIONS TO A MUNICIPAL COMMITTEE except when they are against taxes, for refund of octroi, or relate to conservancy fee.[13]

(8) A PETITION TO A CANTONMENT MAGISTRATE or to the Secretary, Cantonment Board.[14]

838. **APPLICATIONS WHICH NEED NOT BE STAMPED.**—(1) CERTIFICATES OF PAYMENT OF ADJUSTMENT under O. 21, R. 2, Civil Procedure Code, are not chargeable as petitions to Court.[15]

(2) An INVENTORY annexed to an application for attachment is not itself an application requiring stamp duty.[16]

(3) An application for RETURN OF A DOCUMENT (by any person entitled to have it back), need not be in writing.[17]

(4) An application for the ADJOURNMENT OF AN INCOME-TAX APPEAL;[18] or an application to inform the Court about the compounding of a compoundable offence.[19]

(5) A REPORT BY AN INAMDAR on attaching the property of a defaulter under the Bombay Land Revenue Code, S. 90.[20]

(6) A notice required by S. 33 of the Bombay District Manual Act.[21]

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(9) *Balmukand* v. *Haji Hasan Ali*, 14 C.P.L.R. 100.

(10) *Rodrigues* v. *Mathias*, 9 I.C. 538=21 M.L.J. 481=(1911) 1 M. W.N. 237=9 M.L.T. 314.

(11) *Miss Eva Mount Stephens* v. *Hunter Garnett Orme*, 22 I.C. 98=35 All. 448 (*Held*, that an order refusing grant of Letters of Administration with will annexed, is appealable as a decree, and requires a Court-fee of Rs. 10 under Art. 17 (*vi*), Schedule II of the Act).

(12) I. G. Note No. 3103, dated 16th August, 1909.

(13) C. P. Circular No. 11, dated 10th November, 1896, from the Superintendent of Stamps to Deputy Commissioners.

(14) Punjab Stamp Manual, p. 29.

(15) All High Court Circular Letter No. 6 of 1888.

(16) All High Court Circular Letter No. 13 of 1881.

(17) B. G. Resolution No. 66, 5th June, 1888 R.D.

(18) *Ibid.*

(19) *Ibid.*

(20) B. G. Resolution No. 987, dated 11th June, 1882, J.D.

(21) B. G. Resolution No. 4408, dated 19th June, 1884, J.D.

(7) An application for the doing of a thing which the Court or officer is bound to do, *e.g.*, application by a witness for RETURN OF DOCUMENTS filed by him in obedience to a summons, is not chargeable with stamp duty.[22]

(8) An application by an auction-purchaser for a CERTIFICATE OF SALE need bear no stamp, since it is not even required to be in writing.[23]

839. **CLAUSE (b).**—The following applications have been held liable to Court-fee, under this clause.

(1) An APPLICATION TO FILE AWARD of arbitrators under Sch. II, para. 20, Civil Procedure Code, is liable to stamp duty of eight annas under Art. 1 (*b*), of Sch. II of the Act.[24] The proper Court-fee upon an application to file an award, is the Court-fee prescribed for applications, and not the Court-fee upon a plaint.[25]

(2) An APPLICATION TO SET ASIDE AWARD, if made in writing must be stamped under Art. 1 (*b*) of Sch. II of the Act.[26]

(3) An APPPLICATION TO WITHDRAW SUIT, stamped as an agreement presented to a District Court by the parties to a suit falls under Art. 1 (*b*) of Sch. II of the Act.[27] Where the parties to a suit came to an oral agreement and thereupon presented a PETITION TO COURT praying for a decree in accordance therewith, the petition was held to require the ordinary Court-fee label.[28]

(4) A PETITION UNDER GUARDIAN AND WARDS ACT, should not be treated as a plaint in a suit, and requires a Court-fee stamp as prescribed under Sch. II, Art. 1 (*b*).[29]

(5) An appeal to a special Judge IN A PROCEEDING FOR SETTLEMENT OF RENTS under Bengal Tenancy Act, which is not a suit, is nothing more or less than an application, and consequently, is subject to a fee prescribed under Art. 1, Cl. (*b*) (2), Sch. II of the Act.[30]

(6) An APPLICATION FOR REVIEW OF AN INTERLOCUTORY ORDER, not ending in a decree, does not fall under Arts. 4 and 5 of Sch. I of the Act; but is governed by Sch. II, Art. 1.[31]

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(22) 15 W.R. 237.

(23) *Hira* v. *Tebchand*, 13 Bom. 670.

(24) *Dharam Das* v. *Ajudhia Pershad*, 70 P.R. 1881.

(25) *Bijadhur* v. *Manohar*, 10 Cal. 11.

(26) *Adamali* v. *Abdul Ali*, 107 I.C. 223=1928 Sind 87.

(27) Reference under Stamp Act, S. 46, 8 Mad. 15 (F.B.).

(28) Also see and *cf.* 42 I.C. 1008=40 All. 19=15 A.L.J. 846; also see *Puncharum* v. *Gunesh*, 8 W.R. 214 (a razeenamah stating satisfaction of claim and withdrawing the suit, held rather of the nature of an application than of an agreement).

(29) In re *Anonymous*, 6 P.R. 1873 (A petition under Guardian and Wards Act).

(30) *Upadhya Thakur* v. *Persidh Singh*, 23 Cal. 723 (F.B.).

(31) 1892 B.P.J., p. 383; followed in 1 I.C. 999=31 All. 262=6 A.L.J. 151.

(7) An application by a person holding a CLAIM ON PROPERTY attached in execution of decree.[32]

(8) An APPLICATION FOR THE ASSISTANCE OF A COLLECTOR in ejecting a ryot is not a suit, and the revenue Courts should receive such applications upon a stamp of eight annas.[33]

(9) An application by a *Lambardar* for a warrant against a revenue defaulter.[34]

840. CLAUSE (c).—This clause does not apply to (*a*) petitions presented to Lieutenant-Governor, (*b*) to applications of every description presented to a Chief Commissioner or other Revenue or Executive Authority. It applies only to petitions and applications in connection with the PROCEEDINGS taken BEFORE the CHIEF COMMISSIONER or other authority specified in the clause, with a view to the exercise or non-exercise of some power or authority conferred upon him by some law or rule having the force of law.[35]

841. CLAUSE (d).—(1) An application for RESTORATION OF AN APPEAL dismissed for default in payment of paper book costs does not come within O. 47, R. 1, nor is it one of review for judgment within the Court-Fees Act, and it is sufficient if it is stamped with Court-fee of Rs. 2 only.[36]

(2) Where an appeal is dismissed for default of payment of initial deposit, an APPLICATION TO re-admit under O. 41, R. 19, read with S. 151, Civil Procedure Code, is sufficiently stamped with a Court-fee of Rs. 2. Arts. 4 and 5 does not govern such an application.[37]

(3) A memorandum of CROSS-OBJECTIONS ON question of COSTS only, requires a Court-fee of Rs. 2 only under Art. 1 (*d*), Sch. II of the Act.[38]

(4) A SECOND APPEAL from an order rejecting an application for execution of a partition decree UNDER THE GUJARAT TALUQDARI ACT (Bombay Act VI of 1888), is not within the contemplation of Art. I, Sch. I, but is an application falling under Art. I, Sch. II of the Act and a Court-fee stamp of Rs. 2 was accordingly held sufficient.[39]

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(32) *Bal Mukand* v. *Naji Hasanali*, 14 C. P. L. R. 100.

(33) *Peary Mohan* v. *Kena Bewah*, 11 W.R. 90=2 B.L.R. 226.

(34) Punjab Financial Commissioner's Circular No. 41, dated 1st December, 1884.

(35) J. C. Resolution Fin. and Com. Dept. No. 3790, S. R. 27th July, 1894.

(36) *Nalini Sundari* v. *Narendra Chandra*, 1932 Cal. 641=141 I.C. 305=36 C.W.N. 246.

(37) *Haridasi* v. *Sajani Mohan*, 1932 Cal. 770=36 C.W.N. 564=55 C.L.J. 314=138 I.C. 393=59 Cal. 1334.

(38) *Kamal Kumari* v. *Rangpur Bank*, 1921 Cal. 55=25 C.W.N. 934; compare 1926 Lah. 645; 19 Mad. 350; 1929 Pat. 286.

(39) *Jawsang Deoabhai* v. *Goyabhai*, 16 Bom. 408.

(5) A memorandum of APPEAL against an order IN PROBATE PROCEEDINGS is governed by Art. 1, of Sch. II of the Court-Fees Act.[40]

(6) A memorandum of appeal presented to High Court from an ORDER of the District Judge GRANTING LETTERS OF ADMINISTRATION is chargeable with a Court-fee of Rs. 2, under this clause.[41] But, in a later case the view taken was that an ORDER of District Judge REFUSING TO GRANT LETTERS of Administration with a copy of the will annexed is a decree, and the Court-fee payable on appeal is Rs. 10, under Art. 17 (vi), as it is impossible to estimate the subject-matter in dispute at a money-value.[42]

(7) AN APPLICATION FOR REVISION of an order passed by the Cantonment Magistrate in exercise of Small Cause powers, which is admissible under S. 86 of North-West Frontier Province Regulation, and is admitted under S. 25 of the Provincial Small Cause Courts Act, should be charged with a stamp of Rs. 2 under this clause.[43]

(8) APPLICATIONS UNDER S. 115, CIVIL PROCEDURE CODE. Revision petition is only like other petitions to High Court: and the fee under the main Act is Rs. 2; but in Bihar and Orissa, and Bombay it is Rs. 3; in BENGAL and MADRAS, when the value of the suit to which an order relates does not exceed Rs. 1,000, the fee is Rs. 5; and, when the value of the suit becomes Rs. 1,000, the fee is Rs. 10; but otherwise it is Rs. 2. In PUNJAB, under the Indian Companies Act, for winding up a company Rs. 100; under the same Act for some other judicial action, Rs. 5 and in all other cases Rs. 2.

(9) Applications against ORDERS UNDER S. 476 OF THE CRIMINAL PROCEDURE CODE, come under S. 115, Civil Procedure Code, as it is *a case decided* within the meaning of this section, and it has been held that the High Court has no jurisdiction under S. 439, Criminal Procedure Code,[44] to revise such orders passed BY SUBORDINATE CIVIL COURTS.[45]

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(40) *Rodrigues* v. *Mathias*, 9 I.C. 538 (citing 16 Bom. 408 and 23 Cal. 723).

(41) *Lee* v. *Hardy*, 9 A.W.N. 27.

(42) *Mount Stephens* v. *H. G. Orme*, 22 I.C. 98=35 All. 448.

(43) 3 P.L.R. 1914 (N. W. F. B.).

(44) *Ram Prasad* v. *Sorba Roy*, 1 C.W.N. 400; *Gurucharan* v. *Girija Sundari*, 29 Cal. 887=7 C.W.N. 112; *Ramdin* v. *Sewa Baksh*, 6 I.C. 473=37 Cal. 714=14 C.W.N. 806; *Har Prasad* v. *Emperor*, 19 I.C. 197 (204) =40 Cal. 477=17 C.L.J. 245=17 C.W.N. 647; *Public Prosecutor* v. *Ram Udar Singh*, 28 I.C. 334=19 C.W.N. 447=21 C.L.J. 98; *Budhu Lall* v. *Chotu Gope*, 41 I.C. 313 (318)=21 C.W.N. 654=25 C.L.J. 401; *Jainuddin* v. *Keramatullah*, 71 I.C. 595=1924 Cal. 641 (1); compare *Salig Ram* v. *Ramji Lal*, 28 All. 554=3 A.L.J. 394=1906 A.W.N. 103 (sanction granted under S. 195, Criminal Procedure Code); and *Chattu Gope* v. *Budhu Lal*, 36 I.C. 472=43 Cal. 597 (sanction granted under S. 195, Criminal Procedure Code).

(45) *Ibid. Valabdas* v. *Maung Batham*, 85 I.C. 362 (S. 25, Provincial Small Cause Courts Act); *Manwari Lal* v. *Jhunka*, 92 I.C. 454; *Foujdar Rai* v. *Emperor*, 90 I.C. 445 (Collector acting as a Revenue Court: High Courts' power of superintendence exercisable under S. 115, C.P. Code).

(10) Application under Trust Act (1882), S. 34 or S. 74, for summary disposal, may be stamped under Art. 1 (*d*) as amended.[46]

Number.		Proper Fee.
1-A. Application to any Civil Court that records may be called for from another Court.	When the Court grants the application, and is of opinion that the transmission involves use of the post.	Twelve annas in addition to any fee levied on the application under clause (*a*) clause (b), or clause (*d*) of of Article 1 of this Schedule. [One rupee—Bihar and Orissa.] [One rupee two annas — United Provinces.]

842. AMENDMENT.—This article was inserted by Act XIV of 1911. The article has been locally amended by the Bihar and Orissa Court-Fees (Amendment) Act II of 1922, and United Provinces Act III of 1932, as noticed in column 3:

In Madras the rules provided for the deposit in Court of a sum sufficient to repay the postage of the records sent for, to and from the Court; but since the Court-Fees Amendment Act, 1911, a fixed fee of annas twelve is to be levied in place of postal charges.

Number.		Proper Fee.
2. Application for leave to sue as a pauper.	....	Eight annas.
3. Application for leave to appeal as a pauper.	(*a*) When presented to a District Court.	One rupee.
	(*b*) When presented to a Commissioner or a High Court.	Two rupees.

Comments.

843. SCOPE.—These articles provide for proper fee on applications to sue as a pauper (O. XXXIII, Civil Procedure

(46) ***Mohammed Sadiq Ali Khan*** v. ***Kazim Ali Khan,*** 1934 Oudh 118 (2).

Code); and on application for leave to appeal as pauper (O. XLIV, Civil Procedure Code):

An APPPLICATION FOR REVIEW presented in a suit *in forma pauperis*, like the plaint in the suit is not liable to any Court-fee.[47]

An application to continue in *forma pauperis* a suit or appeal on which institution fee has been paid is liable to Court-fee as an ordinary application under Sch. II, Art. 1.

Number.		Proper Fee.
4. Plaint or memorandum of appeal in a suit to obtain possession under Act No. XVI of 1838, or [the Mamlatdars' Courts Act, 1876.]	....	Eight annas.

844. AMENDMENTS.—By the Repealing and Amending Act XII of 1891, the words "the Mamlatdar's Courts Act, 1876, have been substituted for the words and figures, "Bombay Act V of 1864 (to give Mamlatdar's Courts Jurisdiction in certain cases to maintain existing possession or to restore possession to any party dispossessed otherwise than by course of law)."

The Mamlatdar's Courts Act, 1876, is now the Bombay Mamlatdar's Courts Act, 1906 (Act II of 1906). This Act applies only to the Bombay Presidency.

This Article has been omitted in Madras Act V of 1922.

Where a review application relates only to a portion of the judgment in appeal, the Court-fee payable on such application for review is the Court-fee payable on the memorandum of appeal in which the judgment is sought to be reviewed and not only on the relief sought in the application.[48]

Number.		Proper Fee.
5. Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy.	....	Eight annas. [One Rupee-Punjab.] [Twelve annas. U. Provinces.]

(47) *Umda Bibi* v. *Naima Bibi*, 20 All. 410.

(48) *Ibrahim Ali* v. *Ahsan Hussain*, 1933 Nag. 207 (citing 31 All. 294 and 1930 Cal. 631).

845. LOCAL AMENDMENTS.—(1) The words "or of cross-objection," have been inserted after the words "Memorandum of Appeal" by Act II of 1922, Bihar and Orissa; and in Madras, the same amendment has been made by virtue of Act V of 1922 (Madras), enacting that the words "Memorandum of appeal" shall include "Memorandum of cross-objection." (2) The fee has been enhanced, in Punjab and United Provinces, by Act VII of 1922 (Punjab) and Act III of 1932 (United Provinces), respectively.

846. SCOPE.—This article applies to (1) a suit, or appeal, (2) by a landlord or a tenant, (3) for the purpose of establishing or disproving a title to occupancy rights. It is to be distinguished from S. 7 (xi), which applies to suits by a tenant against the landlord to recover the occupancy of immoveable property from which the tenant has been illegally ejected by the landlord. A SUIT FOR DECLARATION OF OCCUPANCY RIGHTS, under the provisions of S. 95, Agra Tenancy Act, is governed by this article;[49] but a suit by a landlord to eject a tenant, does not fall under this article, merely because the tenant as a defendant in the suit sets up a claim to a right of occupancy.[50] The application of Art. 5 depends upon character of suit and not upon the scope of appeal, *e.g.*, it does not apply to suit for recovery of possession.[1]

Number.		Proper Fee.
6. Bail-bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1898 or the Code of Civil Procedure, 1908, and not otherwise provided for by this Act.	....	Eight annas. One Rupee—Bombay. Twelve annas—U. Provinces.

847. AMENDMENTS.—This article was substituted for the old Art. 6, which contained the words "Bail-bond or other instrument of obligation not otherwise provided for by this Act, when given by the direction of any Court or executive authority," by S. 2 of the Repealing and Amending Act (Act XVII of 1914):

(49) *Ratan Singh* v. *Khankaran*, 44 I.C. 608=40 All. 358=16 A.L.J. 167.

(50) *Brahmayya* v. *Lakshminarasimhan*, 16 Mad. 310; compare *Bibi* v. *Marfan*, 11 C.L.R. 91 (suit to eject a tenant at will: object to contest claim as to occupancy rights).

(1) *Haladhar* v. *Sheikh Mongal*, 1931 Cal. 333=126 I.C. 777=34 C.W.N. 217.

The fee has been enhanced in Bombay, to one rupee, and in United Provinces, to annas twelve, by Act II of 1932, and Act III of 1932, respectively.

848. **SCOPE.**—This article, as amended, applies only to bail-bonds, and other instruments of obligation under the Criminal Procedure Code, or under the Civil Procedure Code.[2] It has been ruled in Madras that as the Civil Procedure Code does not apply to the village Courts at all, a SECURITY BOND TAKEN BY A VILLAGE COURT under S. 53 of the Madras Village Courts Act (I of 1889), does not come under Art. 6 of the Court-Fees Act,[3] and has to be stamped under Art. 46 of Sch. I, A of the Madras Stamp Act as amended, which speaks of "security-bonds or mortgage-deeds executed by way of security for the due execution of an office, or to account for money or other property received by virtue thereof."[4] It has been held by the Bombay High Court, that documents of security for the performance of the decree of a small cause court, when an application is made for an order to set aside a decree passed *ex parte* or for a review of judgment, are not documents taken under the Code of Civil Procedure, but under S. 17 of the Provincial Small Cause Courts Act, consequently, they do not fall under Art. 6, Sch. II, of the Court-Fees Act.[5]

849. **BONDS UNDER CRIMINAL PROCEDURE CODE.**—Bail-bonds may be required under S. 499, of the Criminal Procedure Code, in a form given in Form No. 42, Sch. V of the Code, which provides for a money penalty.[6] These bonds may not be limited to appearance before a Court,[7] but they are conditional as to time and place mentioned in the bond.[8] Chapter XLII of the Criminal Procedure Code makes general provisions as to bonds. But there are special provisions in Ss. 108 to 110, for bonds to keep the peace, or be of good behaviour, (Forms X and XI of Sch. V); and under S. 169 (Form XXV, of Sch. V); and for appearance of complaints and witnesses before a Magistrate, under S. 170, Criminal Procedure Code, (Form XXVI of Sch. V); and, bonds for suspension of execution of sentence under S. 388, Criminal Procedure Code (Form 57 of Sch. V).

Under S. 19 (XV), bail-bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise are exempt from fee. And, the GOVERNMENT NOTIFICATION No. 4650, dated 10th September, 1889, exempts security bonds for keeping the peace, or good behaviour of persons other than the executants. Thus, as pointed

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(2) *Cheedella* v. *Annureddi*, 1927 Mad. 377=52 M.L.J. 153=100 I.C. 545=1927 M.W.N. 281=30 M.L.T. 125=25 M.L.W. 246.

(3) *Sankaran Nair* v. *Atchuthan*, 1923 Mad. 651=46 Mad. 734; cited in 1927 Mad. 377=100 I.C. 545 (F.B.), *supra*.

(4) *Ibid.* 46 Mad. 734; and 1927 Mad. 377 (F.B.).

(5) Bombay Printed Judgments, 1897, p. 167.

(6) *Katty*, 1 Cr.L.J. 854.

(7) *Kanshi*, 14 Cr.L.J. 631.

(8) *Chattar*, 1885 A.W.N. 44.

out by Muthuswamy, "almost all bonds produced in Criminal cases are exempt from Court-fee and the provision under this article so far as it relates to bonds under the Criminal Procedure Code may be said to be a surplusage."[9]

850. **BONDS UNDER CIVIL PROCEDURE CODE.**—A Full Bench of the CALCUTTA High Court has held that a security bond executed in pursuance of an order of the Court, under (O. XXXII, 6 (2) or), any rule or section of the Civil Procedure Code , must bear a Court-fee stamp as required by Art. 6 of Sch. II, to the Court-Fees Act.[10] It does not follow, however, that because a security-bond falls within the scope of Art. 6, Sch. II, of the Court-Fees Act, it is free from the provisions of the Stamp Act.[11] A bond which falls under Sch. I, ARTS. 40 OR 57 OF THE STAMP ACT, is not exempt from duty under the Stamp Act; and, if at the same time it has been given in pursuance of the Court's order, it is liable under Art. 6 of Sch. II, of the Court-Fees Act.[12] However, a bond which comes under Art. 15, of the Stamp Act, which is of a residuary character, will not be chargeable under the Stamp Act, if it has been executed in pursuance of an order of Court, that is, in compliance with a condition imposed by a Court.[13]

851. **BOND "IN PURSUANCE OF AN ORDER OF COURT."**—There has been some conflict of view as to the meaning of the expression "BOND GIVEN IN PURSUANCE OF THE ORDER OF COURT." As noticed above, the Full Bench of Calcutta High Court dissents from the view taken in *Dwarika Nath* v. *Sailajakanta,* that a security-bond taken on an order for stay of execution must be stamped in accordance with the Stamp Act, and cannot be written on a plain paper bearing a Court-fee of eight annas.[14] But, this view was accepted in the LAHORE High Court case, of *Guran Ditta Mal* v. *Gurdasmal Ramchand,*[15] where Martineau, J., observed that "what the Court had ordered was that execution should be stayed, the furnishing of security was really not part of its order, but was the condition which it attached to the order" and that the bond could not be said to be written in pursuance of such an order, since "the Court could not compel the judgment-debtor to furnish the security, but it was optional with him to furnish it or not as he pleased." However this ruling was

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(9) *Muthuswamy's* Court-Fees Act, p. 248.

(10) Reference, 89 I.C. 289=1925 Cal. 906=53 Cal. 101=42 C.L.J. 5=29 C.W.N. 851 (F.B.).

(11) *Ibid.*

(12) *Ibid.*

(13) Compare *Dwarika Nath Dey* v. *Saliaja Kanta Mullick,* 43 I.C. 376 =21 C.W.N. 1150 (Diss. in 53 Cal. 101=89 I.C. 289=1925 Cal. 906 (F. B.), *supra.*

(14) 43 I.C. 376=21 C.W.N. 1150; *cf.* 89 I.C. 289=53 Cal. 101 =1925 Cal. 906 (F.B.).

(15) 91 I.C. 772=1925 Lah. 552=7 L.L.J. 343=26 P.L.R. 634.

not followed in *Muhammad Ewar* v. *Haji Naukh Mian*, by Addison, J.[16]

852. **"NOT OTHERWISE PROVIDED FOR BY THIS ACT".**—A bond given in pursuance of an order made by a Court under a section of the Code for example, a SECURITY-BOND FOR THE PRODUCTION OF ATTACHED LIVE STOCK, given *in accordance with the requirements of the rules under S.* 269 of the old Code, is a bond given in pursuance of an order made by a Court under a section of the Code of Civil Procedure, within the meaning of Art. 6, Sch. II, of the Court-Fees Act. Consequently, the proper stamp leviable on such a bond is an eight-anna stamp under the Court-Fees Act, and not *ad valorem* stamp under Arts. 15, 57, Sch. I, of the Stamp Act.[17] This ruling of the Madras Full Bench was followed by the Calcutta High Court in the case of *Sarbo* v. *Safdar*,[18] where it was held that a SECURITY-BOND GIVEN BY A CLAIMANT IN A CLAIM CASE agreeing to be liable for a certain sum of money in case he failed to produce the property attached, was liable to be stamped with a Court-fee stamp of 8 annas under Art. 6, Sch. II, of the Court-Fees Act. Similarly, it was held by Addison, J., in *Muhammad Ewar* v. *Haji Nameh Mian*,[19] that a SECURITY-BOND GIVEN AT THE TIME OF STAY OF EXECUTION for the due performance of the decree making the surety personally liable must bear a Court-fee stamp as required by Art. 6, of Sch. II, of the Court-Fees Act. No stamp under the Stamp Act is necessary as it falls under the residuary Art. 15, Stamp Act. This ruling has been approved by a Special Bench of the Lahore High Court in *Ghulam Muhammad* v. *The Crown*,[20] so far as the decision on the point actually before the Court. But, "the observations in that judgment relating to bonds other than those executed in pursuance of an order of a Court for stay of execution proceedings were merely *obiter*, and should be treated as such."[21]

853. **PERSONAL BONDS.**—Schedule II, Art. 6 applies where the bond is for the due performance of the decree making the surety personally liable.[22] Article 15 of the Stamp Act was amended by Act III of 1889, to include the words "or by the Court-Fees Act, 1870". The result of the amendment is that where a bond falling under Art. 15 of the Stamp Act is leviable

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(16) 1929 Lah. 205=30 P.L.R. 131=11 L.L.J. 40=117 I.C. 226 (*Held*, that a security bond given at the time of stay of execution for the due performance of the decree making the surety personally liable must bear a Court-fee stamp of 8 annas).

(17) In re Reference Stamp Act, 20 I.C. 775=37 Mad. 17=24 M.L.J. 637 (F.B.).

(18) 68 I.C. 730=1923 Cal. 269 (2)=49 Cal. 997.

(19) 117 I.C. 226=1929 Lah. 205=30 P.L.R. 131=11 L.L.J. 40; also see *Jowala Mal* v. *Gianchand*, 143 I.C. 12=34 P.L.R. 480.

(20) 1933 Lah. 89, S.B.

(21) *Ibid.* 1933 Lah. 89 (90), S.B.

(22) 117 I.C. 226=1929 Lah. 205=30 P.L.R. 131=4 L.L.J. 40; reld. in 1933 Lah. 89, S.B.; (F.N. 20-22); also see 37 Mad. 17 (F.B.); *cf.* 1925 Lah. 552.

with stamp duty of eight annas, under Court-Fees Act, the document does not require a non-judicial stamp in addition.[23]

854. HYPOTHECATIONS OF MOVABLE PROPERTY.—"Security-bonds, or mortgage-deeds executed by way of security for the due execution of an office, or to account for money or other property received by virtue thereof or executed by a surety to secure a new performance of a contract," falling under Art. 57 of the Stamp Act, would be liable to a stamp duty under Art. 57, and would also be liable to Court-fee under Sch. II, Art. 6.[24]

855. MORTGAGES OF IMMOVABLE PROPERTY.—Mortgage deeds, not being an agreement relating to deposits of title deeds, pawn or pledge (No. 6), bottomry bond (No. 16); mortgage of crop (No. 41); respondentia (No. 56); or security-bond (No. 57); which fall under Art. 40 of the Stamp Act, likewise, require to be stamped under provisions of the Stamp Act, and would be liable to Court-fee duty under Sch. II, Art. 6; and they would require registration as well.[25] Where Art. 15 is inapplicable, the bond must be stamped both under the Court-fees, and under Art. 40 (or Art. 57) of the Stamp Act.[26]

856. MADRAS CIRCULAR.—The Madras High Court has issued the following Circular stating the proper procedure to be followed in cases of security-bonds executed in pursuance of an order of Civil Court. The circular says, as follows:—

"It has come to the notice of the High Court that the practice obtaining in the districts in regard to the levy of stamp duty on security-bonds executed in pursuance of an order of Court is not uniform. The High Court therefore directs that such security-bonds should be stamped only under Art. 6, Sch. II of the Court-Fees Act; but, if immovable property is mortgaged under the document it should be stamped both under Art. 6, Sch. II of the Court-Fees Act, and under Art. 40, Sch. I of the Indian Stamp Act. Article 57 of the Indian Stamp Act would not apply to security-bonds executed in pursuance of an order of Court. The bonds should be executed either in favour of an officer of Court, or in favour of the opposite party".[27]

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(23) 37 Mad. 17 (F.B.); *cf. Kulwanta* v. *Mahabir*, 11 All. 16 (F.B.) (which holds that it is subject to two duties); but see now, the saving clause in Art. 15 of the Stamp Act; also see *Ghulam Mohd.* v. *Crown*, 141 I.C. 301=1933 Lah. 89 (S.B.).

(24) 53 Cal. 101=89 I.C. 289=1925 Cal. 906 (F.B.) (F.N. 10); also see 49 Cal. 997=1923 Cal. 269=68 I.C. 730 (F.N. 18).

(25) *Amirthammal* v. *Madalakaram*, 43 Mad. 363=38 M.L.J. 503=1920 M.W.N. 245=57 I.C. 184 (followed 11 All 16=1888 A.W.N. 281).

(26) 43 Mad. 363=57 I.C. 184, *supra.*; also see 53 Cal. 101=89 I.C. 289=1925 Cal. 906 (F.B.); which is also authority for this position.

(27) D. Dis. 665|29, dated 23rd March, 1928; also see *Amirthammal* v. *Madalakaran*, 43 Mad. 363=57 I.C. 184=38 M.L.J. 503=12 L.W. 537 (F.B.); (*Held*, that where a receiver executed a bond in favour of the Judge of the Court, making himself personally liable for the due execution of his duties, and also mortgaged certain properties set out therein, a Court-fee Stamp under Art. 6, Sch. II and Stamp-duty under Art. 40, Sch. I, Stamp Act, were both leviable).

857. **PROCEDURE, AND FORM.**—It was observed by their Lordships of the Privy Council in *Raj Raghubar Singh* v. *Jai Indra Bahadur Singh*,[28] that where, for due carrying out of any order that might be passed against a party to a suit, a security-bond is given, which on its proper construction is an instrument of charge only, and not a bond imposing any personal liability, the surety was not bound to the Court, for "the Court is not a juridical person. It cannot be sued. It cannot take property, and as it cannot take property it cannot assign it." Accordingly, "the only mode of enforcing it (the liability) must be by the Court making an order in the suit upon an application to which the sureties are parties, that the property charged be sold unless before a day named the sureties find the money."[29]

As to Forms of such Bonds, See Form No. 3, Appendix G of the Civil Procedure Code of 1908.[30]

Number.		Proper Fee.
7. Under taking under section 49 of the Indian Divorce Act.	....	Eight annas. [One Rupee—Bombay and Punjab.] [Twelve annas—U. Provinces.]

Comments.

858. **LOCAL AMENDMENTS.**—The fee under this article has been enhanced in Bombay, by Act II of 1932, to one-rupee. Similarly, the words "one rupee" has been substituted for the words "eight annas," by (Punjab) Act VII of 1922; and, by Act III of 1931, the fee has been raised to twelve annas, in United Provinces.

859. **SCOPE.**—This article takes the place of the repealed provision in S. 49 of the Divorce Act (Act IV of 1869), prescribing a fee of eight annas for an undertaking by the next friend of a minor-petitioner to be answerable for costs.

Number.		Proper Fee.
8. *Rep. by the Repealing and Amending Act, 1891 (XII of 1891.)*		
9. Do.		

(28) 55 I.C. 550=42 All. 158=46 I.A. 228=38 M.L.J. 302=1919 P.C. 55 (P.C.).

(29) *Ibid.* 55 I.C. 550 (555) P.C..

(30) C. P. Code, 1908, Form 3, Appendix G.

Number.		Proper Fee.
10. Mukhtarnama or Wakalatnama.	When presented for the conduct of any one case—	Eight annas.
	(*a*) to any Civil or Criminal Court other than a High Court, or to any Revenue Court, or to any Collector or Magistrate, or other executive officer, except such as are mentioned in clauses (*b*) and (*c*) of this number.	Eight annas. [One Rupee—Bengal, Bihar and Orissa Madras, Punjab.] [Twelve annas—United Provinces.]
	(*b*) to a Commissioner of Revenue, Circuit or Customs or to any officer charged with the executive administration of a Division, not being the Chief Revenue or Executive Authority;	One rupee. [Two Rupees—Bihar and Orissa.] [One Rupee eight annas—Madras, United Provinces.]
	(*c*) to a High Court, Chief Commissioner, Board of Revenue, or other Chief Controlling Revenue or Executive Authority.	Two rupees. [Three Rupees—Bihar and Orissa, Madras, United Provinces.]

Comments.

860. AMENDMENTS.—The fees under this article have been enhanced as noted in the third column, by Bengal Act IV of 1922; Bihar and Orissa Act II of 1922; Madras Act V of 1922, Punjab Act VII of 1922; and United Provinces Act III of 1932.

By Madras Act V of 1922, the first column of this article has been amended to include any paper signed by an Advocate, signifying or intimating that he is retained for a party.

861. SCOPE.—This article provides for the stamping of mukhtarnamas, or wakalatnamas. CLAUSE (*a*) refers to a mukhtarnamah or wakalatnamah presented to any Civil or Criminal Court other then a High Court or to a Revenue Court or to any Collector or Magistrate or other Executive Officer except such as are mentioned in Cls. (*b*) and (*c*). CLAUSE (*b*) provides for the same class of documents when presented to a Commis-

sioner of Revenue, circuit or customs or to any officer charged with the executive administration of a division, not being the Chief Revenue or Executive Authority. CLAUSE (*c*) provides for the same class of documents when presented to a High Court, Chief Commissioner, Board of Revenue or other Chief Controlling Revenue or Executive Authority. All these documents were intended to be excluded from the definition of the expression POWER OF ATTORNEY, in S. 2 (2) of the Stamp Act. Thus, "the documents referred to in Art. 10, Sch. II of the Court-Fees Act are restricted to documents given to and presented by DULY CERTIFIED MUKHTARS AND PLEADERS under the Legal Practitioner's Act."[31] This view was dissented from by the Punjab Chief Court in a Full Bench Ruling, where it was observed that "the mere juxtaposition of *wakalatnama* and *mukhtarnama* in the article of the Court-Fees Act does not indicate that a *mukhtar* or attorney must be a legal practitioner because a vakil usually is a legal practitioner,"[32] The Allahabad Bull Bench view was concurred in so far that the documents specified in Art. 10 of the second schedule of the Court-Fees Act are the documents which it was intended to exclude from the definition of a Power-of-Attorney in S. 2 (21) of the Stamp Act, but it was held that the Court-Fees Act "is the excluding Act while Stamp Act applies to any document not excluded from its provisions by the Court-Fees Act."[33] Accordingly, it was held that a Power-of-Attorney empowering a person, who is neither a vakil, nor a certified mukhtar, to represent another in a Civil Court is governed by Art. 10 of Sch. II of the Court-Fees Act.[34]

862. DEFINITIONS.—A *Mukhtar* is an attorney whether appointed specially or generaly or certified as a Legal Practitioner.[35] "A MUKHTARNAMA is a document that empowers a *Mukhtar* to act for the person by or on whose behalf the document is executed, and includes a Power-of-Attorney in favour of a person other than a certified *Mukhtar*."[36]

A "*Pleader*," "means any person entitled to appear and plead for another in Court, and includes an Advocate or Vakil, and attorney of the High Court."[37] An advocate, Vakil, or attorney of any High Court, a pleader, Mukhtar, or revenue agent, are all included in the definition of the term Legal Practitioner, as used in the Legal Practitioners Act.[38] A WAKALATNAMA is a document or Power-of-Attorney executed in favour of a Pleader, but as it is chargeable with a Court-fee it does

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(31) *Parmanand* v. *Satprasad*, 33 All. 487=8 A.L.J. 378=9 I.C. 617 (F.B.).

(32) *Ganpat* v. *Prem Singh*, 15 I.C. 122=202 P.L.R. 1912.

(33) *Ibid.* 15 I.C. 122 (124)=202 P.L.R. 1912.

(34) *Ibid.*

(35) *Ganpat* v. *Ram Singh*, 15 I.C. 122, *supra*.

(36) 15 I.C. 122; *c.f.*, 33 All. 487, *supra*.

(37) Section 2 (15), Civil Procedure Code, 1908.

(38) Section 3, Act XVIII of 1879.

not come within the definition of Power-of-Attorney in S. 3 (2) of the Stamp Act.[39]

863. **VAKALATNAMAH.**—A *Vakalatnamah* for the conduct of a case includes the POWER TO APPLY FOR COPIES,[40] and AUTHORITY TO RECEIVE MONEY or the documents.[41]

The CIVIL PROCEDURE CODE, O. 3, R. 4, as amended by Act XXII of 1926, S. 2 (*b*), provides in what *manner* a pleader shall be appointed, and till what time the appointment is to be in force. A pleader in India combines in himself the duties of a Barrister and Attorney, in that he can both *plead* and *act*, whereas a Barrister, who is not an Advocate or Vakil, can only plead, and an attorney can only *act*.[42] The status of an advocate of the Calcutta High Court does not differ from that of a Barrister,[43] but an Advocate of the Allahabad High Court can also act for client and perform all the duties of a pleader.[44] A power of appointment in writing filed by an Advocate, whether he is a Barrister or not, authorizing him to make or do any appearance, application or act on behalf of his client, requires the Court-fees payable upon a *vakalatnamah* as prescribed in Art. 10 of Sch. II, to the Court-Fees Act.[45]

864. **MEMORANDUM OF APPEARANCE.**—In Madras a memorandum of appearance signed by an Advocate is liable to Court-fee as for a vakalatnamah.[46] But, the Madras notification No. 358, dated 10th September, 1921, allows a remision of the fee payable under Art. 10 of Sch. II, by Advocates on memoranda of appearance filed by them when appearing for the accused in criminal cases.[47] But, in Calcutta, a memorandum of appearance, which is a document filed by the Pleader himself, as it contains an authority to *plead*, need not be stamped as a *vakalatnamah* under this Art.[48] The High Court was of opinion that a pleader who under the definition includes an Advocate of the High Court cannot plead in the High Court by merely putting in a memorandam of appearance unless there has been an appearance by the party in person or by a pleader appointed to act for him. In the latter case if the pleader appointed to act for a party has engaged

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(39) See S. 3 (21) of the Stamp Act.

(40) Reference, 9 Mad. 146.

(41) Anonymous, 3 Cal. 767.

(42) *In re Khoda Bux*, 15 Cal. 638.

(43) *Askaran Choutmal* v. *E.I.Ry.*, 52 Cal. 386=88 I.C. 413=1925 Cal. 696=29 C.W.N. 566.

(44) *Bakhtawar Singh* v. *Sant Lal*, 9 All. 617 (621)=1887 A.W.N. 153.

(45) *Abdul Ghaffar* v. *Downing*, 94 I.C. 841=5 Pat. 255=1926 Pat. 246.

(46) 1932, Cal. 1=59 Cal. 370=135 I.C. 789.

(47) B.P. No. 84, Mis., dated 20th April, 1925.

(48) *Rajkumar Pal* v. *Janab Ali Mian*, 35 C.W.N. 1100=135 I.C. 789=59 Cal. 370=1932 Cal. 1, citing 94 I.C. 841=5 Pat. 255=1926 Pat. 246.

the pleader merely to plead for the said party, then this memorandum of appearance need not be filed.[49]

865. **CRIMINAL CASES.**—There is no provision in the Criminal Procedure Code, requiring an Advocate or Vakil to file a duly stamped appointment in writing in order to enable him to present an application or appeal, or conduct a criminal case on behalf of the accused.[50] This article merely means that when an authority is filed such authority must be stamped; but, the necessity for it is not created by this article.[1]

866. **CONSOLIDATED APPEALS.**—The Madras High Court held in *In re Perumal Nadar* that when the Court allows consolidation of appeals, the parties can treat the appeals as one for purposes of filing a single *vakalat*.[2] But a Full Bench of the same High Court has held in *In re Krishnaya Chandrulu*,[3] that a Court has no inherent jurisdiction to consolidate appeals, in cases disposed of by a single judgment of the Lower Court, so as to enable the appellant to pay Court-fee on the value of the consolidated appeals and file one vakalat. This overruled the decision in the earlier case. Another Full Bench ruling in *In re Vaithilinga*[4] has similarly held that Court has no inherent jurisdiction to consolidate Civil Revision petitions so as to enable the party to file one vakalatnama in the petitions, and pay one process fee for the common respondents.

Number.		Proper Fee.
11. Memorandum of appeal when the appeal is not . . . . from a decree or an order having the force of a decree, and is presented—	(*a*) to any Civil Court other than a High Court, or to any Revenue Court or Executive Officer other than the High Court or Chief Controlling Revenue or Executive Authority;	Eight annas.
	(*b*) to a High Court or Chief Commissioner, or other Chief Controlling Executive or Revenue Authority.	Two rupees.

(49) *Rajkumar Pal* v. *Janab Ali Mian*, 35 C.W.N. 1100=135 I.C. 789=59 Cal. 370=1932 Cal. 1, citing 94 I.C. 841=5 Pat. 255=1926 Pat. 246.

(50) *Subda Santal* v. *Emp.* 94 I.C. 714=1926 Pat. 296=7 P.L.T. 524=27 Cr.L.J. 666.

(1) *Ibid.*

(2) 109 I.C. 651=1928 Mad. 643=54 M.L.J. 595.

(3) 1930 Mad. 376=53 Mad. 248 F.B.

(4) 1930 Mad. 381=53 Mad. 381 F.B.; also see *Moosa Soleman* v. *Secretary of State*, 117 I.C. 692=1929 Cal. 135=32 C.W.N. 776.

Comments.

867. **AMENDMENT.**—The words "from an order rejecting a plaint or," were omitted by S. 155 and Sch. 4 of the Code of Civil Procedure, 1908, with the result that orders rejecting plaints are now appealable as decrees, and not as orders.

868. **LOCAL AMENDMENTS.**—In BENGAL AND UNITED PROVINCES, the "Authority" and "Courts" referred to in Col. 2 have been differently grouped, with different prescribed fees. *Vide* Bengal Act IV of 1922; and United Provinces Act III of 1932; by BIHAR AND ORISSA Act II of 1922, the first column has been amended to include a memorandum of cross-objections. The MADRAS ACT V OF 1922, has amended the first column to provide for appeals against all orders including an order determining any question under S. 47 or 144, Civil Procedure Code. The exceptions have been specified by the Amendment. The fees in column 3 have been enhanced in Bengal, Bihar and Orissa, Madras, Punjab and United Provinces. *Vide* Appendices.

869. **SCOPE OF THE ARTICLE.**—This article prescribes the Court-fee on miscellaneous appeals from orders not being a decree, nor having the force of a decree. If the order is a decree or has the force of a decree, the Court-fee on memorandum of appeal is provided for under Sch. I, Art. 1, *ante*. This article applies also to orders under special enactments.

870. **APPLICATION OF THE ARTICLE.—(i) Orders appealable as decrees.**—(1) This article does not apply to an appeal filed against an order refusing execution of decree against an alleged partner of a firm, as such an ORDER UNDER O. XXI, R. 50 (2), CIVIL PROCEDURE CODE, has the force of a decree.[5]

(2) An ORDER REJECTING A PLAINT is now appealable as a decree.[6]

(3) An ORDER DISMISSING AN APPLICATION FOR THE ASCERTAINMENT OF MESNE PROFITS has been held to have the force of a decree, and Sch. II, Art. 11, was not applied.[7]

(4) An ORDER ON APPLICATION TO PASS FINAL DECREES IN MORTGAGE SUITS, was held to require *ad valorem* Court-fee,[8] but an appeal against order directing the passing of the final decree in a mortgage suit is not an appeal from the final decree itself for the purpose of Court-fees.[9] An APPEAL FROM A FINAL DECREE, passed

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(5) *Valiappa Chetty* v. *Rangasawmy Naicker*, 35 I.C. 429 (2)=8 L.B.R. 300=10 Bur. L.T. 42.

(6) *Munshi Mahton* v. *Lachman Mal*, 120 I.C. 765=1929 Pat. 615=10 P.L.T. 545.

(7) *Narain Prasad* v. *Kameshwar*, 43 I.C. 489=3 P.L.J. 101.

(8) *Asghar Ali* v. *Mahabir*, 84 I.C. 742=1925 Oudh 102=27 O.C. 225; also see *Subbalakshmi* v. *Ramalinga*, 42 Mad. 52=48 I.C. 298=35 M.L.J. 552; (order dismissing an application on a final decree).

(9) *Ranga Raju* v. *Ethirajammal*, 1930 Mad. 20=124 I.C. 303=53 Mad. 155=57 M.L.J. 718=30 M.L.W. 846=(1930) M.W.N. 402.

in a mortgage suit, under O. 34, R. 5, Civil Procedure Code, requires an *ad valorem* Court-fee;[10] similarly, a final decree under O. 34, R. 3, Civil Procedure Code.[11]

(5) AN ORDER IN PROBATE PROCEEDINGS, has the force of a decree and an appeal against such orders has to be stamped *ad valorem* under Sch. II, Art. 1, not with a fixed fee under Art. 11.[12]

(6) ORDERS UNDER S. 144, CIVIL PROCEDURE OR UNDER S. 47, CIVIL PROCEDURE CODE, fall within the definition of a decree, and are liable to an *ad valorem* fee under Sch. I, Art. 1; but, the Court-fee for an appeal against an order falling under S. 47, Civil Procedure Code, has been reduced, by Government notification under S. 34 of the Court-Fees Act, to the fee chargeable under Art. 11, Sch. II. Accordingly, an appeal against an order under S. 144, falls under Sch. I, Art. 1, except when the order comes also under S. 47, Civil Procedure Code, in which case, Court-fee will be a fixed sum leviable under this article. For instance, an order on application for restitution consequent on a decree of the appellate Court, has been held to be appealable as a decree;[13] but not an order in execution falling under S. 47, Civil Procedure Code.[14] But, the Lahore High Court held it inequitable to require *ad valorem* Court-fee on an application for restitution on reversal by Appellate Court:[15] and Art. 11, of Sch. II, has been applied to an appeal from an order on an application under S. 144, Civil Procedure Code, for restitution of property taken in execution of decree.[16] However, an appeal from an order of restitution under S. 144, if such order is not contained in the decree of the Appellate Court, has been held to be an order which has the force of decree, and therefore, the Court-fee payable on the memorandum of appeal is not under this article, but *ad valorem* under Sch. I, Art. 1.[17] Where applications for restitution can be regarded as applications in execution, Court-fee on appeals from such orders is leviable under Sch. II, Art. 11,[18] under Cl. (6) of the notification of the

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(10) *Bagrangi Lal* v. *Mahabir*, 35 All. 476=21 I.C. 498=A.L.J. 801; also see *Janki Bai* v. *Ramdayal*, 57 I.C. 579=22 Bom. L.R. 811.

(11) *Balaji* v. *Ballabdas*, 107 I.C. 671=1928 Nag. 146.

(12) *Rodrigues* v. *Mathias*, 9 I.C. 538=21 M.L.J. 481; and *Mt. Manjari Surajmal*, 111 I.C. 294=1928 Nag. 383.

(13) *Maung Hla Maung* v. *Ma Hrina Dauk*, 126 I.C. 211=1930 Rang. 241=8 Rang. 271; also see *Balmukand* v. *Basantakumari*, 78 I.C. 200=3 Pat. 371 (F.B.) (Art. 181 Limitation Act applied—Order itself capable of execution).

(14) *Baijnath* v. *Balmukand*, 47 All. 98=1925 All. 337 (Appeal from restitution order, under S. 144, C.P.Code): Compare *Moti Singh* v. *Harbhajan Singh*, 1927 Lah. 635=103 I.C. 657; But see.

(15) *Rahmatali Shah* v. *Rikhikesh*, 107 I.C. 491=1928 Lah. 143.

(16) *Sitalakshmi* v. *Chokkalinga*, 38 I.C. 811=40 Mad. 780 and *Kurgodi* v. *Nirgum*, 41 I.C. 238=41 Bom. 625.

(17) *Gul Muhammad* v. *Sabzalikhan*, 1930 Lah. 24=113 I.C. 270: (citing 1925 All. 137; 1925 Pat. 1; and 1926 Lah. 685).

(18) *Sudalimuthu Pillay* v. *Sudalimuthu Pillay*, 1923 Mad. 270=71 I.C. 173=17 M.L.W. 623=1922 M.W.N. 831: also see *Gabba* v. *Kanchhedilal*, 1922 Nag.62=67 I.C. 225=18 N.L.R. 15 (Application by judgment-debtor for compensation under (S. 144, C.P.Code); *Madan Mohandey* v.

Government of India, No. 4650, dated the 10th September, 1889. An application, by the defendants for mesne profits, by way of restitution on the dismissal of plaintiff's suit, is one under S. 47, Civil Procedure Code, and would be chargeable with Court-fees under Art. 11, Sch. II of the Act, and not *ad valorem*.[19]

(ii) **Orders not having the force of a decree**.—Save as expressly provided in S. 104 (588, Old Code), or O. 43 (588 Old Code), no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction.[20] An order not having the force of a decree is, therefore, not appealable, unless an appeal is specially provided. Where an appealable order, is appealed from separately, instead of being made the subject of appeal in an appeal from the decree, Court-fees payable on the memorandum of appeal is leviable under Sch. II, Art. 11.

Section 104, and O. 43, Civil Procedure Code enumerate appealable orders which have not the force of a decree. In Madras, an appeal from the decision by which a disputed claim is settled under S. 322-B of the Code of Civil Procedure, 1877, which was not termed by the Code a decree, but declared to have the force of and be enforceable as a decree was considered to be a miscellaneous appeal, that is to say, not an appeal from a decree passed in a regular suit.[21]

Examples of orders not having the force of a decree, are to be found in orders under O. 7, R. 10; O. 9, R. 9; O. 16, R. 10; and O. 10; and O. 21, R. 34, Civil Procedure Code. Similarly, orders under O. 21, Rr. 72, 92; O. 22, Rr. 9, 10; O. 25, R. 2; O. 34, R. 3 or 8; O. 38, Rr. 3, 4, 6; O. 39, Rr. 1, 2; 4; 10; O. 40, Rr. 1, 4; O. 41, Rr. 19, 21; O. 45, R. 6; or O. 47, R. 4, all these orders against which appeals are provided for in O. 43, R. 1, Civil Procedure Code, are simple orders, not having the force of a decree.

871. ORDERS UNDER S. 47, CIVIL PROCEDURE CODE.—An appeal from an order of the lower Court falling under S. 47, Civil Procedure Code, is limited to the fee chargeable under Art. 11 (*b*), Sch. II, Court-Fees Act.[22] Where the matter involves question arising between the parties to the decree or their representatives as to the assignment of a decree, the order allowing (or

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Nagendranathdey, 39 I.C. 640=21 C.W.N. 544 and *Hamidalli* v. *Ahmedali Mahbubali*, 62 I.C. 233=45 Bom. 1137; also see *Sitalprosad Singh* v. *Jagdeo Singh*, 92 I.C. 474=1925 Pat. 577=4 Pat. 294=7 P.L.T. 415.

(19) *Gangadhar* v. *Lachhman Singh*, 6 I.C. 125=11 C.L.J. 541.

(20) S. 105, C.P. Code, 1908.

(21) *Srinivasa Ayyangar* v. *Peria Tambi*, 4 Mad. 420.

(22) Notification No. 1872 J: for Bengal published in Calcutta Gazette, Part I, p. 874, dated 1st June, 1921; also Notification No. 4650 of the Government of the India, published in the India Gazette, dated 14th September, 1889, Part I, pp. 807-810: for remissions by other Local Governments see Bihar and Orissa No. 2576|L.A. 25; Bombay No. 590, dated 16th September, 1921; Burmah No. 41; Central Provinces No. 79|292, XI; Madras No. 308; N.-W. Provinces No. 560 VII, 419, dated 3rd May, 1921; Punjab 10495; dated 27th March, 1922: and United Provinces No. 560 VII, 419; dated 3rd May, 1921); *Itraj*

disallowing) the application of the transferee of the decree, falls within S. 47 (Old S. 244, Civil Procedure Code)[23] Similarly, an order refusing (or granting) an application to record an adjustment of a decree made out of Court, though not made appealable by S. 588 (O. 43 and S. 104, Civil Procedure Code), is an order determining a question between parties to a suit in which a decree was passed and relating to the satisfaction of the decree.[24] An order by a Court executing a decree refusing an application to execute it at the same time against the person and property of the judgment-debtor, is appealable as a "decree" under S. 2 of the Act, and falls within the terms of S. 47, Civil Procedure Code.[25] Both an appeal and a second appeal lie from an order under S. 293 (O. 21, R. 71), Civil Procedure Code, directing a defaulting purchaser at an execution sale to make good the deficiency of price happening on a resale owing to his default.[26] An order making or refusing to make the defaulting auction-purchaser liable for deficiency on re-sale of property for a smaller sum, is appealable under S. 47, Civil Procedure Code.[27] Where the contest is between the judgment-debtor and the decree-holder who is alleged to have made default, the question between them must be treated as a question arising between the parties to the suit within the meaning of S. 47 (Old S. 244), Civil Procedure Code.[28] An appeal from an order of the lower appellate Court, declaring that a party who claimed to be in possession of property taken in execution of a decree to which he was no party and with which he had no concern, had no *locus standi* in the execution case, is in the nature of a miscellaneous appeal, and should be stamped as an ordinary petition.[29]

872. **ORDER FILING OR REFUSING TO FILE AN AWARD**.—Appeal lies under S. 104 (1) (*f*), Civil Procedure Code against order filing or refusing to file an award, although a decree has been passed on it, which is not appealable except on certain grounds.[30] The right of appeal against order is not taken away on a decree being drawn up on the basis of the judgment which follows the order filing an award.[31] The order filing the

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Kumar v. *Bacha Madho*, 6 O.C. 86; but see O. 20 R. 12, C.P.Code and *Nandkumar* v. *Bailasram*, 43 I.C. 855=3 Pat. C.L.J. 116 (appeal against decree).

(23) *Gulzari Lal* v. *Dayaram*, 9 All.46=6 A.W.N. (1886) 287.

(24) *Jamna Prasad* v. *Mathura Prasad*, 16 All. 129=14 A.W.N. (1894) 6.

(25) *Chena Pemaji* v. *Ghelabhai Narandas*, 7 Bom. 301.

(26) *Kalikishore Debi Sarkar* v. *Guru Prasad*, 25 Cal. 99.

(27) *Amir Baksh* v. *Venkatachala Mudali*, 18 Mad. 439=5 M.L.J. 206; also see *Baijnath* v. *Moheep Narain*, 16 Cal. 535=13 Ind. Jur. 458.

(28) *Vallabhan* v. *Panguvani*, 12 Mad. 454.

(29) *Mobesh Chunder* v. *Chunder Maree*, 9 W.R. 139.

(30) 42 All. 185=54 I.C. 445; 35 I.C. 833 All.=380; 10 I.C. 450; 22 I.C. 391 Cal. 28 I.C. 557 Cal.; order appealable even after a decree is made up or the award; *Sarwan* v. *Jagat*, 103 I.C. 315=1927 All. 771=50 All. 128 (appeal against order filing award).

(31) 28 I.C. 557 (Cal.); 35 I.C. 833 (All.); 2 I.C. 92 (Mad.) 93 I.C. 261=1925 Pat. 810; 134 I.C. 474=1931 Oudh 345; 1 Rang. 265=76 I.C.

award does not merge in the decree,[32] and even if the order passing the decree, and the decree are both contained in the same order, they will be taken as separable.[33] An appeal from a decree in terms of an award will be taken as one from the order filing the award.[34] For the purposes of Court-fees an appeal from an order under S. 104 (*f*) of the Code of Civil Procedure, comes under Sch. II, Art. 11 of the Court-Fees Act.[35] An application for revision of an order reversing the order filing the award,[36] or for revision of an order refusing to set aside award,[37] requires a Court-fee of Rs. 4 only.

873. **ORDER UNDER COMPANIES ACT**.—A Memorandum of appeal made to High Court from an order of the District Judge under S. 214 of the Indian Companies Act, requires a fixed fee of Rs. 2, with reference to Sch. II, Art. 11 (*b*) of the Act, as the proceedings leading to the order in question are not, strictly speaking, judicial proceedings, and the order cannot have the force of a decree.[38] A memorandum of appeal from an order under S. 57 of the Indian Companies Act, presented to the High Court must be stamped with a fixed fee under this article.[39]

874. **ORDER REFUSING TO PROCEED AGAINST SURETY**.—Where a judgment-debtor applied to be declared an insolvent within one month of the execution of the surety-bond, but the application was rejected in default of prosecution, and the decree-holder's application for execution of his decree against the surety, was rejected by the Court, it was held by the Punjab Chief Court that the order was not appealable, but only subject to revision, the order not being a decree or having the force of a decree; that this appeal, if it lay, would be subject to a Court-fee of Rs. under Art. 11, Sch. II of the Act.[40] Section 145, Civil Procedure Court provides that the decree or order may be executed against the surety who will be deemed a party within the meaning of S. 47. Court-fee on appeals against such orders will therefore

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504=1923 Rang. 199; also see 88 I.C. 76=47 All. 743 and 47 I.C. 171 (Punjab).

(32) 93 I.C. 261=1925 Pat. 810.

(33) 12 I.C. 269; 112 I.C. 691=1928 Mad. 969; also see 1932 M.W.N. 234.

(34) 88 I.C. 533=1925 Lah. 321.

(35) *Agya Singh* v. *Sundar Singh*, 107 I.C. 756=9 Lah. 380=1928 Lah. 137; also see *Ram Autar* v. *Ram Samujh*, 1932 Oudh 282=6 Luck. 703 =139 I.C. 622=9 O.W.N. 800 and *Lakshiman* v. *Rama Esu*, 8 Bom. H.C. A.C. 117 (An application to High Court to set aside an order of the District Court, reversing an order of a Court of first instance directing a private award to be filed, treated as an miscellaneous special appeal.

(36) 110 I.C. 302=1929 Lah. 367.

(37) 111 I.C. 145=1929 Lah. 369.

(38) Reference, 17 All. 238=1895 A.W.N. 56.

(39) *Nawab of Bella Spinning & Weaving Coy., Ltd.* v. *Atmaram*, (1865) P.J. 214.

(40) *Lillomal* v. *Harjimal*, 72 P.R. 1902.

fall under this Article, by virtue of Government Notifications already noticed.

875. ORDER TO RE-ADMIT A CASE.—An appeal from an order under O. 43, R. 1, Civil Procedure Code, directing the lower Court to re-admit a case under O. 41, R. 23 does not require an *ad valorem* Court-fee, but a Court-fee of Rs. 2 is alone properly leviable under Sch. II, Art. 11, of the Court-Fees Act, the order not being a decree as defined in S. 2 of the Civil Procedure Code.[41] An appeal lies to the High Court from an order of the Appellate Court refusing to re-admit an appeal dismissed for default, and the stamp for such an appeal is one of Rs. 2 under Art. 11, Sch. II of the Court-Fees Act.[42]

876. ORDERS OF REMAND.—An application for review of an order of remand under S. 566, Civil Procedure Code (O. 41, R. 25), is an application for review of judgment, and so it may be presented on stamped paper under Sch. II, Art. 11, of the Act.[43] An order remanding a case under S. 562 (O. 41, R. 23), Civil Procedure Code, is not a decree nor an order having the force of a decree, and a memorandum of appeal from such an order falls under Sch. II, Art. 11, and does not fall under Art. 1, Sch. I; or require an *ad valorem* fee.[44]

877. For the purposes of Court-fee on appeal it is sufficient that the order of the appellate Court purports to have been made under O. 41, R. 23; even though it may appear that the appellate Court making the order of remand had no jurisdiction to pass the order under R. 23 of O. 41, Civil Procedure Code.[45] Where, however, the Appellate decree determines the right of the appellant on merits, and the case is sent down for the determination of other questions consequent upon the decree, an appeal from the appellate decree will be governed by the *ad valorem* rule in Sch. I, Art. 1, of the Act.[46] Where the order of remand does not fall under O. 41, R. 23, but is under inherent jurisdiction of the Court, the order is not appealable as a decree, or under O. 43, and no appeal lies.[47]

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(41) *Balli Rai* v. *Mahabir Rai*, 21 All. 178=1898 A.W. N. 23.

(42) *Musst. Kahno* v. *Sohel Singh*, 100 P.R. 1883.

(43) *Jagannath Prasad* v. *Mulchand*, 1 I.C. 999=31 All. 262=6 A.L.J. 15.

(44) *Sadiq Mahamed* v. *Gur Shai Ram*, 6 P.R. 1880; also see *Lakshman* v. *Ram Esu*, 8 Bm. H.C.R. (A.C.) 17.

(45) *Radhakrishna Saha* v. *Kamalakamini*, 70 I.C. 547=1922 Cal. 456 =35 C.L.J. 345; *Gokul Prasad Har Prasad* v. *Ramkumar*, 64 I.C. 878=44 All. 176=1922 All. 25=19 A.L.J. 971; *Kulsoomunnisa* v. *Ram Parsad*, 67 I.C. 713=44 All. 492=1922 All. 226=20 A.L.J. 321.

(46) *Raghunath Das* v. *Jhari Singh*, 45 I.C. 100=3 P.L.J. 99; also see *Umrad Ali* v. *Abdul Subhan*, 5 A.L.J. 645=28 A.W.N. 40, and *cf. Bhairab* v. *Kali*, 1923 Cal. 606=37 C.L.J. 481 (appeal against decree).

(47) *Banka Behari* v. *Birendra Nath*, 55 Cal. 219, Compare *Bhairab Chandra* v. *Kali Kumar*, 37 C.L.J. 491 (492); see *Abdul Karim* v. *The Allahabad Bank*, 41 I.C. 598=44 Cal. 929, as to powers of remand under S. 151, C.P.C. his ruling has been followed in Bombay, 46 Bom. 184=1928 Bom. 267; Lahore, 74 I.C. 47=1924 Lah. 36; in Madras, 54 Mad. 900=1922 Mad.

878. **ORDER REJECTING APPLICATION TO SET ASIDE EX PARTE DECREE.**—The stamp required for a petition of appeal from an order rejecting an application to set aside an *ex parte* decision, is the stamp required for a miscellaneous petition, namely two rupees. Such an appeal should be treated as a summary, and not a regular appeal.[48]

879. **ORDER DIRECTING ABATEMENT OF SUIT.**—An order directing the abatement of a suit is not a decree, and therefore is not appealable.[49] An order dismissing an application to be brought on record as the representative of deceased appellant, under O. XXII, R. 5, Civil Procedure Code, is not a decree and no appeal lies from such an order.[50]

880. **PRELIMINARY ISSUE.**—An order deciding a preliminary issue or issues in plaintiff's favour is one within the meaning of this Act.[1] But, the decision of a Court on a preliminary issue framed on a plea of *res judicata* is not a preliminary decree, and is, therefore, not appealable.[2] An interlocutory order passed by a Court on an objection raised by the defendant, cannot be taken as coming within the definition of a decree, if it does not touch the essential merits of the case between the parties, and deals with questions which were within the discretion of the trial Court, and upon which there had been no adjudication conclusively determining the rights of the parties.[3]

881. **ORDER REJECTING LEAVE FOR FURTHER APPEAL.**—An appeal from order rejecting leave for further appeal under Letters Patent, when decree makes no mention of it is governed by Sch. II, Art. 11, (*b*) of the Act.[4]

882. **SECOND APPEAL (BOMBAY).**—This article applies to petition of second appeal on the appellate side of the Bombay High Court.[5]

883. **ORDER REJECTING APPORTIONMENT OF COMPENSATION.**—An order rejecting a claim for apportionment of the compensation under the Land Acquisition Act, and referring the claimants to a Civil Court is liable to a Court-fee under this article as a miscellaneous appeal.[6]

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505 and 45 Mad. 449=1922 Mad. 112; in Patna, 43 I.C. 956; and 57 I.C. 561.

(48) *Parbutty* v. *Greedhari Lal*, v. 4 W.R. 15 Misc.

(49) *Walayat Husain* v. *Ram Lal*, 25 I.C. 643; citing *Hamida Bibi* v. *Ali Husein*, 17 All. 12.

(50) *Duni Chund* v. *Arja Nand*, 28 I.C. 687=37 All. 272.

(1) 18 C.L.J. 78.

(2) *Pursotam Rao* v. *Radhabhai*, 15 I.C. 566.

(3) *Umar Ali* v. *Nasibannissa*, 82 P.R. 1911=13 I.C. 800.

(4) *Ram Charan* v. *Hamid Ali*, 117 I.C. 595=1929 Cal. 575=56 Cal. 482=33 C.W.N. 32.

(5) Ex parte *Desai Kalyamarai*, 4 Bom. H.C. (A.C.) 154.

(6) 8 C.W.N. 321; (*Harischandra* v. *Bhaba Tarini*).

884. **ORDERS FOR MEASUREMENT OF LANDS.**—Petitions for appeals in cases to obtain the order for measurement of lands of tenants may be stamped as for miscellaneous appeals under this article.[7] But if the relief has been valued by the petitioner at a certain amount, the Court-fee shall be *ad valorem* on the value so declared.[8]

885. **ORDERS UNDER MALABAR TENANCY ACT.**—Under S. 50 of the (Madras), Malabar Tenancy Act, appeals from orders lie as from decrees, but the procedure provided as regards suits in the Code of Civil Procedure, is to be followed in all proceedings under the Act. Consequently the provisions of Court-Fees Act applicable to decrees shall govern such orders, and Sch. II, Art. 11, would not apply.[9]

886. **ORDERS UNDER BENGAL TENANCY ACT.**—In *Petu Ghorai* v. *Ram Khelawan,*[10] it was held that the Court-fee payable on a memorandum of appeal presented to the High Court under S. 108, (Cl. 3), of the Bengal Tenancy Act, 1883, is that prescribed by Art. 17, Cl. (*vi*), of Sch. II of the Court-Fees Act. This was overruled by the Full Bench Ruling in *Upadhya Thakur* v. *Persidh Singh,*[11] holding that the proceedings in the case could not properly be regarded as a *suit,* and neither Art. 17, Cl. (*vi*), nor S. 17 of the Court-Fees Act was applicable where an appeal was preferred by the landlord against a number of defendants, joined in a proceeding for settlement of rents.

887. **MADRAS FOREST ACT.**—An appeal to the District Court from the rejection of a claim by a Forest Settlement Officer under Cl. 11 of S. 10, of the Madras Forest Act, 1882, has been held to fall under Art. 17, Cl. VI, and not under this article. The decision of the Forest Settlement Officer upon the claim was regarded as a decision in proceedings in the nature of a suit.[12]

888. **SUCCESSION CERTIFICATE ACT—Indian Succession Act.**—An appeal against an order under S. 19 of the Succession Certificate Act, was held to fall under this article.[13] Appeals against an order under S. 384, Indian Succession Act, would fall under this article.

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(7) *Smith* v. *Nandan Lal,* 6 W.R. (Act X) 13.

(8) *Omacharan Biswas* v. *Shib Nath,* 8 W.R. 14.

(9) S. R. No. 1923 23 (unreported) cited in Satyamurthi's Court-Fees Act, pp. 456, 457.

(10) 18 Cal. 667.

(11) 23 Cal. 723 (F.B.). (Held that the memorandum of appeal was nothing more or less than an application subject to one court-fee of eight annas only under Art. (1) (b), Part 2 of Sched. II of the Court-Fees Act).

Note.—This ruling has been most adversely criticised by Satyamurthi in his Court-Fees Act, pp. 457, 458 as opposed to the decision of Madras High Court in 8 Mad. 22, and the *ratio decidendi,* being at variance with the decision of the Privy Council case in 45 Mad. 320 (P.C.).

(12) *Kamaraja v. Secretary of State,* 8 Mad. 22.

(13) C.M.A. No. 125 of 1900 (Unreported) cited in Satyamurthi's Court-Fees Act, p. 467.

889. ORDER DECIDING ELECTION PETITION.—The validity of a Municipal election can only be tested by an election *petition* presented to one tribunal. The decision of that tribunal is final, and there is no appeal from it.[14]

Number.		Proper Fee.
12. Caveat ..	....	Five rupees. [Ten Rupees—in Bihar and Orissa, and Madras also in Bombay (for amounts over 2,000).] Five Rupees—in Bombay where the amount or value does not exceed Rs. 2,000.

Comments.

890. LOCAL AMENDMENTS.—By Act II of 1932, (Bombay), Art. 12, has been amended to provide for a proper fee of Rs. 5, "when the amount or value of the property involved does not exceed two thousand rupees"; and Rs. 10, "when the amount or value of the property involved exceeds two thousand rupees":

By Bengal, (Act IV of 1922); Bihar and Orissa Act II of 1932; Madras Act V of 1922; and United Provinces Act III of 1932, the fee under this article has been enhanced to Rs. 10.

891. CAVEAT.—"A caveat is in the nature of a precautionary measure intended to ensure that there shall be no proceedings in the matter of the estate of the deceased without notice to the person who files the coveat."[15] Where citations were issued upon the daughter of the deceased, in connection with an application for probate, and she appeared on such citation, and by her petition intimated that she intended to oppose the grant, the petition was not held to be a caveat, requiring a stamp of Rs. 5, under this article, but a stamp of eight annas was ruled as sufficient.[16] A probate proceeding becomes contentious not upon the entry of a caveat, but upon the filing of the affidavit in support of the caveat.[17]

(14) *Nandram* v. *Chhotey Lal*, 21 I.C. 575=11 A.L.J. 945 (F.B.).

(15) *Bhobatarni Tebi* v. *Haricharan Banerjee*, 36 I.C. 38=20 C.W.N. 787.

(16) *Ibid*. 36 I.C. 38, *supra*.

(17) *Chotal Chunilal* v. *Bai Kabubai*, 22 Bom. 261.

Number.		Proper Fee.
13. Application under Act No. X of 1859, section 26, or Bengal Act No. VI of 1862. section 9, or Bengal Act No. VIII of 1869, section 37.	....	Five rupees. [Ten rupees in Bengal.]

Comments.

892. LOCAL AMENDMENTS.—The fee has been enhanced, by Bengal Act IV of 1922, to ten rupees.

This article has been omitted by Madras Act V of 1922.

The applications referred to in the article, relate to suits by landlords. See S. 91, Bengal Tenancy Act.

ACT X OF 1859, was repealed by the Bengal Tenancy Act (VIII of 1885): and by Bengal Act I of 1879 (now Act VI of 1908), in the Province of Agra, by Act XVIII of 1873; and in the Central Provinces, by the Central Province Act IX of 1883.

(BENGAL) ACT VI OF 1862, was repealed by the Bengal Tenancy Act, VIII of 1885; and by the Chota Nagpur Act I of 1879, (now, Bengal Act VI of 1908);

(BENGAL) ACT VIII OF 1869, was repealed by the Bengal Tenancy Act, 1885, (VIII of 1885).

Number.		Proper Fee.
14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1886.	....	Five rupees. [Ten rupees in Bombay, in Behar and Orissa.] [Rupees seven and annas eight in U. P.]

Comments.

893. AMENDMENT.—By Bombay Act II of 1932, the fee in column 3 has been raised to ten rupees: Similarly, in Bihar and Orissa (Act II of 1922); but by United Provinces Act III of 1932, the fee is raised to "seven rupees eight annas."

Number.		Proper Fee.
15. [*Repealed by Act V of 1908, Sch. V.*]*	....	
16. [*Repealed by Act VI of 1889, S. 18.*]†		
17. Plaint or memorandum of appeal in each of the following suits:—	....	
(i) to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court:		Ten rupees.
(ii) to alter or cancel any entry in a register of the names of proprietors of revenue paying estates:		
(iii) to obtain a declaratory decree where no consequential relief is prayed:		
(iv) to set aside an award:		
(v) to set aside an adoption:		
(vi) every other suit where it is not possible to estimate at a money-value the subject-matter in dispute, and which is not otherwise provided for by this Act.		

* A suit for the Possession of a wife is not now one of the permissible forms of action.

† Administration Bond now requires an *ad valorem* duty UNDER the Stamp Act.

894. AMENDMENTS.—This article has been amended as follows by several local Acts.

BENGAL (ACT IV OF 1922).—The fee of Rs. 10, has been raised to Rs. 15, for items (*i*),(*ii*), (*iv*) and (*vi*); and to Rs. 20 for items (*iii*) and (*v*):

BIHAR AND ORISSA (ACT II OF 1922).—The words "or of cross-objections" have been added after the words "memorandum of appeal" and the fee for all items has been raised to Rs. 15.

BOMBAY (ACT II OF 1923).

Number.		Proper Fee.
Plaint on memorandum of appeal in each of the following suits:—		
(i) to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court;	Where the amount or value of the property does not exceed 500 rupees.	Ten rupees.
(ii) to alter or cancel an entry in a register of the names of proprietors of revenue paying estates:	When the amount or the value of the property exceeds five hundred rupees.	Fifteen rupees.
(iii) to obtain a declaratory decree or order, where no consequential relief is prayed:	..	Fifteen rupees.
(iv) to set aside an alienation:	..	Fifteen rupees.
(v) to set aside a decree or award:	When the amount or value of the property does not exceed 500 rupees.	Ten rupees.
	When the amount or value of the property exceeds 500 rupees.	Fifteen rupees.
(vi) to set aside an adoption:		Fifteen rupees.
(vii) any other suit where it is not possible to estimate at a money value the subject-matter in dispute and which is not otherwise provided for by this Act.	..	Fifteen rupees.

MADRAS (ACT V OF 1922).

Number.	....	Proper Fee.
17. Plaint or memorandum of appeal in a suit—		
(i) to alter or set aside a summary decision or order of any of the Civil Courts not esta-		Fifteen rupees.

MADRAS (ACT V OF 1922)—*Contd.*

Number.		Proper Fee.
blished by Letters Patent or of any Revenue Court.		
(ii) to alter or cancel any entry in a register of the names of proprietors of revenue paying estates.	..	Fifteen rupees.
(iii) for relief under S. 14 of the Religious Endowments Act, 1863, or under S. 91 or under S. 92 of the Code of Civil Procedure, 1900.	..	Fifty rupees.
17-A. Plaint or memorandum of appeal in a suit—		
(i) to obtain a declaratory decree where no consequential relief is prayed:	When the plaint is presented to or the memorandum of appeal is against the decree of—	Fifteen rupees.
(ii) to set aside an award:		
(iii) to obtain a declaration that an alleged adoption is invalid or never in fact took place or to obtain a declaration that an adoption is valid.	A District Munsif's Court or the City Civil Court.	Hundred rupees if the value for purposes of jurisdiction is less than ten thousand rupees.
	A District Court or a Sub-court.	Five hundred rupees if such value is ten thousand rupees or upwards
17-B. Plaint or memorandum of appeal in every suit where it is not possible to estimate at a money-value the subject-matter in dispute and which is not otherwise provided for by this Act.	When the plaint is presented or to the memorandum of appeal is against the decree of—	
	a Revenue Court,	Ten rupees.
	a District Munsif's Court or the City Civil Court,	Fifteen rupees.
	a District Court or Sub-court.	One hundred rupees.

UNITED PROVINCES.—In United Provinces the fee is raised to Rs. 15, but the proviso prescribes a fee of Rs. 100, in a suit before the High Court under its original jurisdiction.

895. PLAINT OR MEMORANDA OF APPEALS IN A SUIT.—Art. 17, of Sch. II, though it relates to a plaint or memorandum of appeal in the classes of suits mentioned therein does not relate to cross-objections filed in similar suits.[18] The words "*or cross-objections*" were added to Art. 1, Sch. I, by the amendment in 1908, but not to Art. 17 of Sch. II. This may have been by oversight, but as the article stands, except in Madras and in Bihar and Orissa, a MEMORANDUM OF CROSS-OBJECTIONS claiming

(18) *Bishan Sahai* v. *Chhote Lal*, (1924) I.L.R. 47 All. 89.

a relief of the nature mentioned in this article, REQUIRES AN *AD VALOREM* COURT-FEE according to the value or amount of the subject-matter in dispute. Thus in the case of a cross-objection claiming possession of an immoveable property the Court-fee is payable *ad valorem* on the value of the property, and should not be calculated on five times the land-revenue in according with S. 7 (v) of the Act.[19] The *ad valorem* fee is payable on a cross-objection even when the relief claimed by it is of a declaratory nature which would come under Art. 17 of Sch. II.[20]

896. PARTIAL RELIEF CLAIMED IN APPEAL.—Where the relief claimed in appeal is AS REGARDS THE DECLARATION PORTION ONLY OF THE SUIT, which also embraced a suit for money, the proper fee chargeable for such appeal is Rs. 10, under Art. 17 (*iii*), of the second schedule, of the Act.[21] Under a literal construction of Art. 17 (*iii*), it refers to the nature of the suit as the criterion for determining whether an appeal comes under it, and though the suit is not for a declaratory decree without consequential relief, S. 16 of the Act clearly indicates that, where an appeal is only against a part of a decision, and that part relates only to a portion of the subject-matter, the memorandum of appeal is sufficiently stamped, if it bears the Court-fee stamp CHARGEABLE UPON SUCH PORTION OF THE SUBJECT-MATTER.[22] Similarly, where in the Court below the plaintiffs paid in Court-fee upon the prayers for *khas* possession, the appointment of a receiver, and a declaration of their rights as reversioners, but in the Appellate Court the prayer was expressly limited to a declaratory relief, the fee of Rs. 10 was held sufficient.[23]

897. SCH. II, ART. 17, CL. (i)—"SUMMARY DECISION OR ORDER".—The words "summary decision or order" have not been defined in the Court-Fees Act, but they have been held to mean "a decision of the Civil Courts not being a decree made in a regular suit, or appeal."[24] The nature of a summary proceeding is that the decision of a Court which hears and determines the matter "does not finally conclude the parties". It is "a proceeding in which the Court makes an order, and determines the matter in issue, for the present occasion", and the decision is "not to be questioned by an appeal, but the matter of which may afterwards be contested by a regular suit."[25] In the Bombay Full Bench case, the term summary decision or order was also interpreted to

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(19) *Bishan Sahai* v. *Chhotey Lal*, 1925 All. 119 (1)=47 All. 89=85 I.C. 270=22 A.L.J. 911; following *Ishdatt Tiwari* v. *Tameswar*, 45 All. 537=1924 All. 175.

(20) 40 All. 93=43 I.C. 179=15 A.L.J. 886; cited in 47 All. 89=1925 All. 119 (1), *supra*.

(21) *The Simla Corporation, Ltd.* v. *Narpat Rai*, 43 P.R. 1888; also see *Girijanand* v. *Sailajanand*, 23 Cal. 645.

(22) *Girijanand* v. *Sailajanand*, 23 Cal. 645 (651).

(23) *Jagdeep Narain* v. *Jaikasi Koer*, 22 I.C. 928=19 C.W.N. 1191.

(24) *Ramdhan* v. *Rameswar*, 11 W.R. 117=2 B.L.R. A.C. 235.

(25) *Mahtab Chand* v. *Bacha Ram*, 13 W.R. 74 (F.B.).

mean a decision or order not made in a regular suit or appeal.[26] Westropp, J., observed that there were two classes of suits, which might be brought in pursuance of the permission given in the concluding passage of S. 246 of Act VIII of 1859, (O. 21, R. 63): (1) suits to set aside an attachment where the intervenient has failed in his application to have the attachment set aside: and (2) suits to restore an attachment where the intervenient has succeeded in his application by obtaining a discharge of the attachment. Such suits fell both under the terms of S. 7 (iv) (*c*), Art. 17, Cl. 1 of Sch. II of the Court-Fees Act, but their Lordships applied the latter clause, "without positively binding themselves to the proposition that every decision or order not made in a regular suit or appeal is a summary decision or order."[27]

898. In the Privy Council case of *Phulkumari* v. *Ghanshyam Misra*,[28] the plaintiff was in possession of immoveable property which she had purchased from the second defendant against whom the first defendant obtained a decree in execution of which the plaintiff's property was attached. Her claim in the execution proceedings being rejected, she brought a suit for declaration of her right to the property, and for an injunction to restrain the first defendant from executing his decree against it. Their Lordships held that Art. 17, Sch. II, expressly applied to suit of the description, and that with merely a verbal or formal difference, "S. 283, Civil Procedure Code (O. 21, R. 63) under which section the action was brought, recognized such a suit as not merely an appropriate but the only mode of obtaining review in such cases." The terms of sub-S. 1, Art. 17, which they held to apply, contain no reference to value. In any case, the value of the action meant the value to the plaintiff, and not the execution debt, unless it is less than the value of the property.

899. ALLAHABAD.—The plaint in a suit by a person, whose claim to attached property has been disallowed, to establish or to declare his right to such property may be brought on a stamp of Rs. 10, and need not be stamped according to the market or other value of the property.[29] Where the relief is confined to a simple declaration of title, and the setting aside of the order of civil court in the execution department by removal of the attachment, both requirements are included in Sch. II, Art. 17 of the Court-Fees Act.[30] Thus a suit to set aside an order disallowing a claim to property attached in execution of a decree is one to which this article applies, and may be brought on a ten

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(26) *Dayachand Nenchand* v. *Hemchand Dharamchand*, 4 Bom. 515 (F.B.).

(27) *Ibid.* 4 Bom. 515 (F.B.).

(28) 35 Cal. 202, P.C. (approved *Dhondo Sakharan* v. *Gobind Babaji*, 9 Bom. 20).

(29) *Chunia* v. *Ramdial*, 1 All. 360.

(30) *Gulzarimal* v. *Jadauv Rai*, 2 All. 63.

rupees stamp without reference to the amount of the decree.[31] In *Maurajkuari* v. *Maharajah Radha Prasad Singh*,[32] and in *Dildar Fatima* v. *Naraindas*,[33] the Court-fee payable for a declaration of right to certain property, and for release of the said property from attachment in execution of a decree was held to be Rs. 10 in respect of each of the reliefs prayed for, but in *Gobind Nath Tiwari* v. *Gajraj*,[34] the two separate declarations, *viz.*, (1) that the property is the plaintiffs' and (2) that it is not liable to attachment under a certain decree, were deemed one expressed in different manners, and the Court-fee of Rs. 10 was held sufficient. Similarly, where an AUCTION-PURCHASER who was resisted in obtaining actual possession by a person claiming to be the owner in possession of the property, made an application under S. 335 of the Code of Civil Procedure (O. 21, Rr. 97, 99 and 103), which was rejected, and the auction-purchaser accordingly filed a suit against the person in possession CLAIMING A DECLARATION OF HIS RIGHT TO PRESENT POSSESSION OF THE PROPERTY, a Court-fee of Rs. 10 was held sufficient.[35]

(2) JURISDICTIONAL VALUATION OF SUIT. In *Dwarkadas* v. *Kameshar Prasad*,[38] it was held that where in a suit by the claimant against the decree-holder and the judgment-debtor the plaintiff prayed for a declaration that the property was his and was not liable to attachment, the attached property must be taken as the subject-matter of the suit. The valuation of such a suit for declaration that the property belongs to the plaintiff, and is not liable to attachment and sale in satisfacion of a decree is the amount of the decree where it is less than the value of the property.[37]

900. **Bombay**.—A stamp of Rs. 10 is sufficient for the plaint or memorandum of appeal in a suit brought to restore an attachment removed at the instance of an intervenient, under Civil Procedure Code.[38] Such a suit is one to set aside a summary decision of a Civil Court not established by Letters Patent, within the meaning of Sch. II, Art. 17, Cl. (1) of the Court-Fees Act.[39] When a party prefers a claim or makes an objection to the attachment of any property in execution of a decree, but fails to establish it, and brings a suit to establish his right to the property attached, the plaint is to be treated as falling under Art. 17, Cl. (1) of Sch. II

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(31) *Fatima Begam* v. *Sukh Ram*, 6 All. 341=4 A.W.N. (1884), 113.

(32) 6 All. 466=4 A.W.N. (1884) 175 (A decision under S. 181, N.-W.P. Rent Act (XII of 1881) relating to the right to the property attached).

(33) 11 All. 365=9 A.W.N. (1889) 131.

(34) 13 All. 389=11 A.W.N. (1891) 139 (Fiscal provision construed strictly in favour of the litigant).

(35) *Piryadas* v. *Vilayat Khan*, 22 All. 384 (followed 9 Bom. 20).

(36) 17 All. 69; approved in *Dhan Devi* v. *Zamurud Begam*, 27 All. 440.

(37) *Khetra Pal* v. *Mumtaz Begam*, 38 All. 72=31 I.C. 879.

(38) *Dayachand Nenchand* v. *Hemchand Dharamchand*, 4 Bom. 515 (F.B.).

(39) *Sadashiv Yeshwant* v. *Atmaram Sakharam*, 4 Bom. 535, N.

of the Court-Fees Act, and is chargeable with only a ten rupees stamp, notwithstanding that the plaintiff may pray in such a suit to be awarded possession.[40] Where, on the removal of an attachment at the instance of a third party, the judgment-creditor brings a suit to establish the right of his judgment-debtor to the property from which the attachment has been removed, and to get the summary order set aside, the proper stamp on a plaint of that kind is Rs. 10, under S. 6, and Sch. II, Art. 17, of the Court-Fees Act.[41]

(2) The valuation of a suit, mentioned in Sch. II, Art. 17, which relates to land or an interest in land is the value of the land or interest in land, for purposes of jurisdiction.[42] For the purpose of determining the question of jurisdiction, the valuation of a suit should be computed according to the market-value of the subject-matter of the suit, and not according to the special rules applicable to valuation fixed in Court-Fees Act.[43] In *Rachappa* v. *Shidappa,* their Lordships of the Privy Council, similarly, held that "if any part of the fee payable and paid is a fixed fee under Sch. II of the Act, then the notional value of the property, or any part of it cannot displace its real value for the purpose of jurisdiction."[44]

901. Calcutta.—The Calcutta ruling in *Fulkumari* v. *Ghanshyam,* that a suit of the nature referred to in S. 283, Civil Procedure Code (O. 21, R. 63, Act V of 1908), instituted for the declaration of the plaintiff's right to and possession of a property attached, and for a perpetual injunction to restrain its sale in execution of a decree, is one in which consequential relief is prayed for, and, therefore, subject to *ad valorem* Court-fee duty, was overruled by their Lordships of the Privy Council in 35 Cal. 202, P.C.[45] Following this decision, the Calcutta High Court has held that the plaint in a suit of the nature indicated in O. 21, R. 63, Civil Procedure Code, is not chargeable with an *ad valorem* Court-fee, but with a fixed Court-fees of Rs. 10.[46] A suit contemplated by O. 21, R. 63, which calls in question an adverse decision of the Court is a method of obtaining a review, and is a "suit to set aside a summary decision or order of the Court."[47] Where a person, whose claim to properties attached in execution of a decree has been *dismissed for default,* sues to set aside the decision under Art. 17, a Court-fee of Rs. 10 is payable upon the plaint. An order

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(40) *Dhondo Sakharam* v. *Gobind Babaji,* 9 Bom. 20 followed in 35 Cal. 202 (P.C.).

(41) *Vithal Krishna* v. *Balkrishna Janardhan,* 10 Bom. 610 (F.B.); *Kammath* v. *Kunhamid,* 15 Mad. 288.

(42) *Dayaram Jagjivan* v. *Gordhandas Dayaram,* 31 Bom. 73.

(43) *Kalu* v. *Vishram,* 1 Bom. 543.

(44) 1918 P.C. 188=43 Bom. 507=46 I.A. 24 P.C.=50 I.C. 280; etc.

(45) 35 Cal. 202=35 I.A. 22=7 C.L.J. 36=12 C.W.N. 169 (P.C.).

(46) *Gol Asmater Khatun,* 64 I.C. 49.

(47) *Abdul Kader* v. *Ali Meah,* 14 I.C. 715; and *Askaran Boid,* 30 I.C. 554=56 M.L.J. 52.

dismissing a claim for default is an order within the meaning of O. 21, R. 63, Civil Procedure Code.[48] For purposes of jurisdiction, the Court should be guided by the value of the property in suit.[49]

902. Madras.—Where a claimant to property attached in execution of a decree intervenes, but fails to get the order of attachment set aside, and is compelled to bring a suit to establish his right, the discharge of the order of attachment cannot properly be asked for in such suit. The intervenor having established his title by declaratory decree or otherwise should then carry the decree to the Court by which the order of attachment was issued, and such Court is bound to recognise the adjudication and govern itself accordingly.[50] The special right conferred by S. 283 (O. 21, R. 63), Civil Procedure Code, on a claimant whose claim is rejected, to sue for a declaration of his title in so far as it is affected by the order passed against him is not controlled by the proviso to S. 42 of the Specific Relief Act, and the plaintiff in such a suit is not bound to ask for any further relief to which he may be entitled.[1] Suits under O. 21, R. 63, are not original suits but a mere continuation of proceedings in a claim-petition.[2] The suit contemplated under R. 63 is a suit to establish the right which the plaintiff claims in the claim-petition and the cause of action in the suit filed under R. 63 must be the cause of action comprised in the claim-petition.[3] Where the plaintiffs had raised a claim to a *Kanom* attached in execution of a decree against their undivided brother, which was allowed in part, sued for a declaration of their title to four-fifths of the *Kanom* amount, affixing to the plaint a Rs. 10 stamp, it was held that the plaint was sufficiently stamped.[4] An order on a claim petition under O. 21, Rr. 60, 61 is connected with rights to immoveable property attached, and is not merely an affair between the parties in their personal capacities unconnected with rights to and over the properties.[5]

An appeal lies under the Letters Patent from the order of a single Judge of the High Court passed on the original side in a claim-petition;[6] and this right of appeal conferred by S. 15 of the Letters Patent is not taken away by S. 283 (O. 21, R. 63) or or S. 591 (S. 105, Act V of 1908), of the Old Code.[7]

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(48) *Satindra Nath Banerji* v. *Shiva Prosad*, 1922 Cal. 166=64 I.C. 713=26 C.W.N. 126; also see *Nagendra Lal* v. *Fani Bhushan Das*, 45 Cal. 785=44 I.C. 265.

(49) *Kirty Churn* v. *Aunath*, 8 Cal. 757=11 C.L.R. 95.

(50) *Kolasherri Narainan* v. *Nilakandan*, 4 Mad. 131.

(1) *Kristnan Sooraya* v. *Pathma Bee*, 29 Mad. 151 (16 Mad. 140).

(2) *Krishnappa Chetty* v. *Abdul Khader*, 25 I.C. 11=38 Mad. 535=26 M.L.J. 449.

(3) *Venkatta Subba Rao* v. *Golete Vigneswaradu*, 1928 Mad. 840=110 I.C. 855.

(4) *Kanmathu* v. *Kunhamed*, 15 Mad. 288.

(5) Per *Sadasiva Aiyar, J.* in 38 Mad. 535=25 I.C. 11, *supra*.

(6) *Sabapathi* v. *Narayansami*, 25 Mad. 555=11 M.L.J. 340; cited in *Venugopal* v. *Venkata*, 28 I.C. 367=39 Mad. 1196.

(7) *Venugopal* v. *Venkata*, 28 I.C. 367=39 Mad. 1196.

903. **JURISDICTION: VALUATION OF SUIT.**—In suits under S. 283 (O. 21, R. 63), Civil Procedure Code, to establish a right to attach property, by a decree-holder, the subject-matter of the suit being the right to attach the property for the decree debt, the amount of the decree-debt must be looked to unless it exceeds the value of the property sought to be attached, in which case the value of the property must be looked to.[8] A suit under S. 283 (O. 21, R. 63), is only a suit to have it declared that the property is not liable to attachment. Consequently, the amount of the debt for which the property is attached should primarily determine the jurisdiction.[9] Even where the judgment-debtor is made a party, but no distinct claim is made against him, the value of the suit is the amount for which the property was attached when such amount is less than the value of the property.[10] The value for purposes of jurisdiction, where no special method of valuation has been provided by a statute is the market-value of the properties affected.[11] In a suit instituted under O. 21, R. 63, Civil Procedure Code (both against the judgment-debtor and the decree-holder), to cancel the attachment and also to declare that the judgment-debtor has no interest in the property attached, the market-value of the land, and not the amount due under the decree in execution of which the land was attached, determines the Court which should entertain the suit.[12]

904. **Punjab: Court-Fees.**—A Full Bench of the Punjab Chief Court has held that a claim by the decree-holder under S. 283, Civil Procedure Code (O. 21, R. 63), against his judgment-debtor and the successful objector to establish his right to attach, in execution of his decree, the property in dispute, or for declaration to have a preferential right to the attachment of the property in dispute in supersession of the summary order is one falling either under Cl. (*i*) or (*iii*) of Art. 17 of the Court-Fees Act, and that a Court-fee of Rs. 10 is sufficient for the plaint.[13] The Court-fee on the plaint in a suit to contest an order under S. 282, Civil Procedure Code (O. 21, R. 62), is that prescribed by Art. 17 (i), Sch. II of the Act.[14]

905. **JURISDICTION, VALUATION OF SUIT.**—The valuation of a suit by a creditor to establish right to attach and sell property in execution of decree is the amount of the decree sought to be realised out of the property, and not the value of the

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(8) *Krishnama Chariar* v. *Srinivasa Ayyangar*, 4 Mad. 339; also see *Modhusuddun* v. *Rakhal Chunder*, 15 Cal. 104.

(9) *Krishnasami* v. *Somasundaram*, 30 Mad. 335=17 M.L.J. 95=2 M.L.T. 116 (F.B.).

(10) *Ibid.* 30 Mad. 335, *supra.*, (F.B.).

(11) *Veeremma* v. *Marupudi*, 1927 Mad. 563=50 Mad. 646=101 I.C. 379=52 M.L.J. 381=25 L.W. 440.

(12) *Narayan Singh* v. *Aiyasami Reddi*, 31 I.C. 188=29 M.L.J. 728.

(13) *Sardar Dial Singh* v. *Beti Ram*, 51 P.R. 1897 (F.B.).

(14) *Ilam Din* v. *Bhagat Singh*, 12 P.L.R. 1902.

property itself unless the two amounts happen to be identical.[15] Where the value of the property exceeds the amount of the decree, the value to the plaintiff is limited to the amount of his decree, but where the amount of the decree exceeds the value of the property, the value to the plaintiff is the value of the property.[16] Where in a suit to establish right to certain property attached, there was no dispute beween the objector-plaintiff and the judgment-debtor and the decretal amount was less than the value of the house, it was held that the amount of the decree being "the burden from which plaintiff sought to be relieved", the value of the suit, for purposes of jurisdiction, "as between the decree-holder and the plaintiff, was the decretal amount, and not the value of the house."[17] The question of jurisdictional valuation of suit for declaration of title to attached property by objector, against judgment-debtor, and by the objector against the decree-holder, or by the decree-holder against objector came before a Full Bench of the Punjab Chief Court in *Sher Ali Shah* v. *Lachmandas*.[18] It was held by the Full Bench that the proper valuation, for purposes of jurisdiction, of a suit by an unsuccessful objector against the decree-holder and the judgment-debtor to declare the property not liable to attachment, *the judgment-debtor resisting* the suit, and claiming the property to be his, is the value of the property attached, and not the decretal amount.[19] Johnstone, J., enumerated the possible suits under S. 283 (O. 21, R. 63, Civil Procedure Code), as follows:—

(*a*) *Suit by the decree-holder* for a declaration that the property is liable to attachment;

(*b*) *Suit by the objector against the decree-holder*, to declare the property not liable, the judgment-debtor siding with the objector, and not claiming the property as his;

(*c*) *Suit by the objector against the decree-holder, and the judgment-debtor*, to declare the property not liable, and the judgment-debtor resisting the suit, and claiming the property as his, and the plaint asserting that this is the judgment-debtor's attitude.[20]

Suppose in all these cases the decree amount is *less* than the value of the property.

In CLASS (A), the "subject-matter of the suit" is the decretal amount. This is all the decree-holder wants.

In CLASS (B), the subject-matter is probably the decretal amount. The objector-plaintiff's title to the ownership of the

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(15) *Bhai Harnam Singh* v. *Bhagwan Devi*, 50 P.R. 1890.
(16) *Mayamal* v. *Bela Singh*, 121 P.R. 1890.
(17) *Bishnu* v. *Lal Singh*, 55 P.R. 1906.
(18) 94 P.R. 1908 (F.B.).
(19) *Ibid.*
(20) *Ibid.*

property as such is safe inasmuch as the judgment-debtor admits it, and what the plaintiff wants is merely a declaration that the decree-holder is not entitled to realise out of the property the sum decreed in his favour.

In CLASS (c), the order passed by the executing court, if not set aside or overruled, will result in the loss to the objector not of the decretal amount but of the whole property attached. The objector brings his suit not only to prevent the decree-holder from resisting his claim out of the property, but also to prevent the judgment-debtor from appropriating the surplus left after the satisfaction of the decree. In short this suit is for property *in toto*. Therefore, the proper valuation of the case for purposes of jurisdiction is the value of this property attached and not the decretal amount.[21] An example of class (*a*) is to be found in *Bhagwandas* v. *Kashi Ram*,[22] where it was held that in a suit for declaration under O. 21, R. 63, Civil Procedure Code, by the decree-holder, where there is no dispute as to title between the judgment-debtor and the other objector and the former is merely a *pro forma* defendant, the value of the suit for purposes of jurisdiction is the amount of the decree. An illustration of class (*c*) is to be found in *Sardar Begam* v. *Mehrchand*,[23] where *P*, the wife of a judgment-debtor brought a suit for declaration that a certain house, which had been attached in execution of decree against her husband was really her property, having been made over to her in lieu of dower. It was held that as the plaintiff sought a declaration not only as against the decree-holder, but also against the judgment-debtor, that the property which had been attached, was in its entirety her own, the value of the suit for the purposes of jurisdiction was the value of that property, and not the decretal amount. Another illustration is to be found in *Kalu Mal* v. *Shamsuddin*,[24] where it was held that the value of a suit for declaration as owner of the property attached in execution of a decree brought by the unsuccessful objector against both the judgment-debtor and the decree-holder is the value of the property and not the value of the decree. Consequently the value of the property being over Rs. 5,000, an appeal lay to the Chief-Court, although the value of the decree was less than 5000.[25]

906. Patna.—Where an objection is dismissed under O 21, R. 58, Civil Procedure Code, and the unsuccessful claimant brings a suit under O. 21, R. 63, to establish his title to the property in dispute, the suit falls under Art. 17, Sch. II, of the Court-Fees Act. The fact that the property was actually sold before the suit was brought does not affect the nature and scope of the suit, where the plaintiff claims to be in possession of the property and does not ask for being restored or that possession be

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(21) 94 P.R. 1908 (F.B.).
(22) 25 I.C. 180.
(23) 82 P.R. 1913=18 I.C. 820.
(24) 41 P.R. 1913=17 I.C. 196.
(25) *Ibid.*

delivered to him.[26] Where the plaintiff's property is attached at the instance of a creditor of its ostensible owner, and the plaintiff asks only for the release of his property from attachment, the Court-fee payable would be Rs. 10 under Sch. II, Art. 17 (1) of the Court-Fees Act.[27] "If the ostensible owner is joined as a party to the suit, and a suggestion made in the plaint that that ostensible owner is in wrongful possession of the property, and a prayer made for restoration thereto, the Court-fee payable on that prayer, being a prayer for a relief consequential to the declaration, must be calculated upon the value of the property in accordance with S. 7 (iv), of the Act."[28] If the plaintiff is defeated he must again pay Court-fees upon the value of the property, *plus* Rs. 10 for the declaration.[29] But if the plaintiff is successful, the Court-fee to be paid must be regulated by a consideration of the relief sought in appeal. If the attaching creditor only appeals the relief sought is against the declaration only. The Court-fee payable by him would be Rs. 10 only. If the ostensible owner appeals the Court-fee payable would be the Court-fee calculated upon the value of the property."[30]

907. **SUMMARY**.—In suits under O. 21, R. 63, Civil Procedure Code, for declaration of right to property in dispute, and contesting the liability or non-liability of the property to be attached or sold in execution, the claim is in essence one to set aside a summary order, and is chargeable with a fixed fee, under Sch. II, Art. 17 (1) of the Act. All reliefs properly referrable to such cause of action, *e.g.*, declaration of title to possession of property, or injunction may be claimed and granted in the suit without any additional Court-fee, except where the defeated claimant also asks for consequential relief, making the suit one falling under S. 7 (iv) (*c*), of the Act.

As to jurisdictional valuation, where the sole question is between the attaching decree-holder and the objector, the value of the suit is the amount of the decree where the value of the property exceeds that amount; or the value of the property when this is *less* than the decree amount. Where judgment-debtor is added as a contesting defendant, the suit should be valued according to the market-value of the property attached.

908. **PROVISIONAL FEE—HIGH COURT RULES**.—The fee of Rs. 10 is now only applicable in provinces where there has been no amendment of the schedule. This Court-fee of Rs. 10 was fixed arbitrarily for convenience, and S. 9 OF THE SUITS VALUATION Act enacted that this fee, fixed on an arbitrary valuation, should be regarded as provisional, and liable to be supplanted, in the case of selected classes of suits, by a Court-fee based on what the

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(26) *Must. Manik* v. *Ranjas Agarwala*, 70 I.C. 332.
(27) *Chandradhari Singh* v. *Tipan Prasad Singh*, 43 I.C. 971.
(28) *Ibid.* 43 I.C. 971, *supra.*
(29) 43 I.C. 971, *supra.*
(30) *Ibid.*

High Court and the Local Government considered to be a reasonable basis of valuation.[31]

The CHIEF COURT OF THE PUNJAB had under S. 9 of the Suits Valuation Act directed that suits of the nature described under head (*v*) of Art. 17 of Sch. II of the Court-Fees Act shall for the purposes of that Act be treated as if their subject-matter was of the value of Rs. 200 on which the fee is Rs. 15, although a suit falling under head (*v*) is one of a definite nature for which the Court-Fees Act prescribes a fixed fee without any reference to the possibility of estimating value.

The JUDICIAL COMMISSIONERS OF OUDH also have, under S. 9 of the Suits Valuation Act, directed that suits in which the plaintiff asks for a decree establishing or annulling an adoption shall be treated as if their subject-matter was of the value of Rs. 400 for the purpose of the Court-Fees Act.

In NAGPUR an amendment has been made with reference to suits under paragraph (*v*) and such forms of suit falling under paragraph (*vi*), under which when a suit to declare an adoption valid affects a title to property, exceeding Rs. 400 in value, then the words "ten rupees" must be read for the purpose of Court-Fees Act as *ad valorem* such property. In other words, the second column of Sch. II, Art. 17, should be read thus, "ten rupees unless otherwise ordered by any rule made under S. 9 of the Suits Valuation Act."

It was held in *Ganpatrao* v. *Laxmibai*[32] that "whether in the case of a particular class of suits the High Court and Local Government exercised their discretion wisely, and whether or not in a suit for declaration of adoption, "a Court-fee *ad valorem* of the property is a reasonable fee, are questions beyond the jurisdiction of the Courts." The rules as they stand have the force of law.

Art. 17, Cl. (ii). To alter or cancel any entry in a register of the names of proprietors of revenue-paying estates.

Comments.

909. **SCOPE.**—This article governs suits under the Land Registration Acts of Bengal and Madras. Where the plaintiffs brought a suit to obtain a declaration that they were occupancy tenants and not tenure-holders and that the survey entry describing them as tenure-holders was wrong, and *that it could not in any way be binding on them*, it was held that the suit was not for a declaration with consequential relief, merely because they had merely thrown in redundant words about the entry in the record of rights being not binding on them.[33] S. 106 of the Bengal Tenancy Act

(31) *Ganpatrai* v. *Laxmi Bai*, 43 I.C. 64=15 N.L.R. 24.
(32) 43 I.C. 64=15 N.L.R. 24.
(33) *Tewary Kora* v. *Bhupat Mander*, 50 I.C. 298=4 P.L.J. 302.

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requires that all suits under that section shall be instituted before the Revenue Officer within three months from the date of the final publication of the record of rights under sub-s. 2 of S. 103-A of that Act and S. 107 provides that a note of all disputes decided under S. 106 by a Revenue Officer shall be made in the record of rights finally published under S. 103 (ii) of Bengal Tenancy Act.[34] It was held in *Satish Chandra Giri* v. *Gopal Chandra Roy*, that in the case of a suit brought before a Revenue Officer under S. 106 of the Bengal Tenancy Act and claiming those reliefs only provided by that section, the institution fee would be that provided in Cl. (*iii*) of Art. 17 of the second schedule of the Court-Fees Act.[35]

910. MADRAS: ART. 17 (iii), PUBLIC TRUSTS.—The Court-fee on suits relating to religious endowments, public trust, or charity is prescribed by this article for Madras Presidency. The proper Court-fee payable on an APPLICATION UNDER S. 84, RELIGIOUS ENDOWMENTS ACT, II OF 1927, is the fee leviable on a plaint under Art. 17, Sch. II, Madras Court-Fees Amendment Act, 1922. It was held in *Godasankara* v. *Board of Commissioners*[36] that the expression "*Art.* 17", must be deemed to include the whole of Art. 17, consisting of Cl. (1), (2) and (3), 17-A (1), (2) and (3), and 17-B, and that the application to set aside the order of the Religious Endowments Board and to declare that the plaint temple is a private temple, would come within 17-A (1), for no consequential relief is prayed and a declaratory decree is asked for. The difficulty in applying Art. 17 (1), with a favourable form of taxation was that the Board of Commissioners, is not a Civil Court within the meaning of that article.[37] But this view was dissented from in a later ruling in the case of *Sundara Ayyar* v. *Board of Commissioners*,[38] where it was held that Art. 17-A, and 17-B, cannot be regarded as parts of Art. 17, but only as new articles. A definite RULE OF PRACTICE OF LEGISLATURES "is to adopt the small letters of the English Alphabet (*a*), (*b*), (*c*), etc., to denote parts of a section, and if further sub-divisions are required, to use the Arabic Numerals with or without brackets; but where a new section is required to be inserted between two sections, and where they consider it desirable not to the alter the number of the sections, they add the capital letters of the English Alphabet A, B, C, etc., without brackets to the Arabic numerals".[39] It was pointed out in this case that "we have nothing to do with the discussion whether the description in the first column of Art. 17, is appli-

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(34) *Chandi Charan* v. *Manoranjan*, 18 I.C. 275.

(35) 7 I.C. 627=12 C.L.J. 638=15 C.W.N. 110; cited in 18 I.C. 275, *supra*.

(36) 1929 Mad. 52=1928 M.W.N. 509=56 M.L.J. 113=29 M.L.W. 549=113 I.C. 88.

(37) 1929 Mad. 52=113 I.C. 88, *supra*; citing *Raghunadha Patro* v. *Govinda Patro*, 1928 Mad. 1032 (F.B.); (Board of Revenue, not a Civil Court, subject to the revisional powers of the High Court).

(38) 1929 Mad. 334=56 M.L.J. 373=29 M.L.W. 298=1929 M.W.N. 308=52 Mad. 388=115 I.C. 157.

(39) *Ibid.* 1929 Mad. 334=115 I.C. 157, *supra*.

cable to an application under S. 84 (2), Act II of 1927. The Court-fee payable on the petitions under S. 84 (2), Madras Hindu Religious Endowments Act, 1927, is Rs. 15, as that is the figure in Col. 3 of Art. 17, which has to be taken in this connection, rather than the figure of Rs. 50, as Art. 17 (*i*) resembles the matter and comes nearest the description to the application, although all three clauses in Col. (1) of Art. 17 are inapplicable taken literally."[40] If the Legislature meant to include Art. 17-A, and 17-B, in Art. 17, the intention has not been expressed by use of apt language.[41] The question came up before the FULL BENCH in the case of *Damodaran* v. *The Board of Commissioners*,[42] and they preferred to follow the decision in Sundara Ayyar's case, holding the proper Court-fee payable in respect of an application filed under S. 84 (2), Madras, Hindu Religious Endowments Act, II of 1927, to modify or set aside a decision of the Hindu Religious Endowments Board under S. 84 (1) of the Act, is the Court-fee leviable under Art. 17 (1), that is Rs. 15, and that Arts. 17-A and 17-B must not be read as parts of Art. 17, but as independent articles.

911. Art. 71, Cl. (iii) To obtain a declaration where no consequential relief is prayed for [Sch. II, Art. 17-A (i), Madras.]

This Cl. (iii) of Art. 17 of the main Act, and Art. 17-A (*i*) of the Madras Act V of 1922, apply to suits for simple declaration, without any consequential relief. A suit for a declaration with consequential relief falls under S. 7 (*iv*) (*c*).

912. **APPLICABILITY OF ART. 17 (iii).**—It has been observed that "it is a common fashion to attempt an evasion of Court-fee by casting the prayers of the plaint into a declaratory shape.[43] "Where the evasion is successful, it cannot be touched, but the device does not merit encouragement or favour."[44] Fixed fee is payable only when the suit is for declaration, not when the suit conceals the real consequential relief prayed for.[45] However, plaintiff can avoid paying the proper Court-fee by dispensing with consequential prayer, at the risk, however, of having his suit dismissed under S. 42, Specific Relief Act, if a further

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(40) Per *Ramesam, J.*, in 1929 Mad. 334 (336), *supra*.

(41) Per *Venkatasubba Rao, J.*, in 1929 Mad. 334 (337), *supra*.

(42) 1930 Mad. 392, Full Bench, 31 M.L.W. 428=58 M.L.J. 494 1930 M.W.N. 404=53 Mad. 266.

(43) *Deokali Koer* v. *Kedarnath*, 15 I.C. 427=39 Cal. 704.

(44) *Ibid.* 15 I.C. 427=39 Cal. 704; also see 110 I.C. 752=1928 Mad. 929.

(45) 106 I.C. 335=1927 Cal. 775 (*Bidhu Bhushan* v. *Kala Chand Roy*); and 51 Cal. 216=1924 Cal. 731=81 I.C. 763 (*Tara Prasanna* v. *Nrisingha*) a suit for the reversal of a sale under the Patni Regulation of 1819, involving prayers for injunction and for confirmation of possession, does not come under Art. 17 (iii); and *cf.* 82 I.C. 297=1924 Cal. 881 (*Nandlal* v. *Jogendra Chandra*). (The provision as to declaratory suits requires great care and circumspection.)

relief is open to him.[46] Where the plaintiff deliberately seeks the relief of declaration with no consequential relief, such as the cancellation of an instrument, *ad valorem* Court-fee is not payable.[47] The same view was held by the Full Bench of Allahabad High Court, in *Srikrishna Chandra* v. *Mahabir Prasad*,[48] where it was held that "where the plaintiff merely asked for a declaration that the previous decree was not in any way binding on him and was altogether void and ineffectual, the suit was one for obtaining a declaratory decree only, and fell under Art. 17 (*iii*) of Sch. 2, Court-Fees Act, and the Court-fee of Rs. 10 paid by him was sufficient. Accordingly, it has been held that "if the plaintiff might and ought to have claimed any further or consequential relief and has omitted to do so, he may have offended against the provisions of S. 42 of the Specific Relief Act; but for all purposes of the Court-Fees Act, we have to consider merely the relief actually claimed by the plaintiff and not the relief which he ought to have claimed."[49] The question under S. 42, Special Relief Act, is whether it is binding on plaintiff, in a particular case to ask for consequential relief.[50] But, a plaintiff cannot be deemed to have asked for consequential relief when he studiously refrains from asking it.[1]

913. **DECLARATORY SUITS.**—It has been noticed in the comments under S. 7 (4) (*c*) of the main Act, that there are three classes of declaratory suits:—(1) suits for declaration, pure and simple, for which a fixed fee of Rs. 10 (increased in some Provinces, by Local Legislatures), is payable; (2) suits for declaration, with consequential relief, falling under S. 7 (4) (*c*) of the Act, liable to an *ad valorem* Court-fee on value fixed by the plaintiff, at his option or arbitrarily, and (3) suits for declaratory decree, with or without consequential relief, combined with a relief falling under some other paragraph of S. 7, *e.g.*, a possessory suit under S. 7 (v) of the Act.

914. **SUITS FALLING UNDER THIS CLAUSE.**—ACCOUNTS AND INSPECTION OF BOOKS. A suit merely for a declaration of liability on the part of the defendants to account to him, and to permit him to inspect their books, is simply a suit for a declaratory decree without consequential relief, and so within Art. 17 (iii) of Sch. 2 of the Act.[2]

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(46) *Narayan Singh* v. *Dildar Ali Khan*, 80 I.C. 544=3 Pat. 915=1925 Pat. 210.

(47) *Lakshmi Narayan Rai* v. *Dip Narain Rai*, 1933 All. 350=55 All. 274; also see *Abdul Samad Khan* v. *Anjuman Islamia, Gorakhpur*, 1934 All. 56=1933 A.L.J. 1537.

(48) 1933 All. 488; cited in 1934 All. 56, *supra*.

(49) *Abdul Ahmad Khan* v. *Anjuman Islamia*, 1934 All. 56, *supra*.

(50) 76 I.C. 448=1923 Cal. 362 (*Umarannissa* v. *Jamirannessa*).

(1) *Radhabhuka* v. *Ram Narain*, 1931 All. 369=131 I.C. 604; also see *Mahomed Ismail* v. *Liaqat Hossein*, 140 I.C. 191=1932 All. 316=1932 A.L.J. 165.

(2) 2 Bom. 219 (225, 226); also see 10 Bom. 60.

915. ADOPTIONS.—A suit for a declaration that an adoption shall not affect plaintiff's reversionary rights, is not a suit for annulling the adoption.[3] Similarly, a suit for a *declaration of the validity or invalidity of adoption* is a simple declaratory suit, if the plaintiff is already in possession of the property.[4]

916. ALIENATIONS.—A suit by the son of a Zemindar that the alienations made by the latter are not binding on the plaintiff falls within this article.[5] A suit by a coparcener in a joint Hindu family for a declaration that a mortgage of joint family property effected by another coparcener shall not be binding on the property mortgaged, falls under this article, and does not entail the cancellation of mortgage deed in its entirety, so as to require an *ad valorem fee*.[6] A suit by a member of a joint Hindu family for a declaration that a mortgage executed by his undivided father and brother is without consideration and not binding upon him falls within the purview of this article, and not of S. 7 (iv) (*c*) of the Act.[7] A suit for a declaration that a sale is invalid, by one who is not a party to the sale is a simple declaratory suit which does not involve any consequential relief, and hence a stamp of Rs. 10 is sufficient.[8] A person entitled as a reversioner after a Hindu widow can maintain a suit for declaration that the alienation by the widow, will not affect plaintiff's reversionary interests after her death,[9] and if the facts alleged are such that the only relief that can be granted is a declaration that the document shall be inoperative against him, and do not disclose a right to have it delivered up, and cancelled in whole or in part, it cannot be presumed that he asks for a consequential relief merely because he asks to have it set aside.[10] Each alienation creates a distinct right vesting in the alienee, and, when the reversioner seeks for a declaration that a number of distinct alienations are invalid, he must be held to be suing for that number of alienations.[11] the reliefs claimed by the plaintiff being distinct and independent of each other.[12] Where the plaintiff brought a suit against his

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(3) 84 I.C. 486=5 Lah. 440.

(4) 43 I.C. 64 (Nag.).

(5) *Narayana* v. *Muttaya*, 7 Mad. 134.

(6) *Sham Das* v. *Charn Das*, 78 I.C. 782=1925 Lah. 90; citing *Nanak Chand* v. *Jiwan Mal*, 35 P.R. 1914=25 I.C. 435=237 P.L.R. 1914.

(7) *Venkata Ramani Iyer* v. *Narayanswami*, 1925 Mad. 713=87 I.C. 660=48 M.L.J. 688; also see *Harbhagwan* v. *Amar Singh*, 83 I.C. 332=5 Lah. 137=1924 Lah. 530 (Suit for declaration that a certain alienation made by plaintiff's father should not bind his reversionary interest).

(8) *Daya Shankar* v. *Mohd. Ibrahim*, 1933 Oudh 116=141 I.C. 798=10 O.W.N. 19, citing *Kuber Saran* v. *Raghubar*, 1922 Oudh 491=121 I.C. 281.

(9) *Bakshish Singh* v. *Narain Singh*, 70 P.R. 1877; also see 57 I.C. 494=18 A.L.J. 903; also see and *cf. Palaniappan Chettiar* v. *Settichi*, 1933 Mad. 108 (Transferee appealing against decree declaring alienations invalid, but holding transferee entitled to a certain sum from ultimate reversioners—Court-fee payable under Art. 17A for all reliefs).

(10) *Hakim* v. *Mahtabkaur*, 109 P.R. 1893.

(11) *Daivachilaya* v. *Ponnathal*, 18 Mad. 459 (suit by reversioners to declare various alienations by a Hindu widow to be invalid against them).

(12) *Karuppa Thevar* v. *Angammal*, 96 I.C. 129=1926 Mad. 678=23 M.L.W. 581=51 M.L.J. 67 (In a suit by reversioners challenging aliena-

father and others, to whom portions of the impartible estate had been alienated, by the father, for a declaration as to his future right to succeed after his father's death to the Zemindari in quesion, and for a declaration that the alienations made by his father will not then be binding upon the plaintiff, the Court-fee leviable on the plaint was Rs. 10, and Art. 17 (iii) of Sch. II of the Act, and not an *ad valorem* fee calculated upon the amount for which the alienations had been made.[13] A suit in which the transaction by the Karnavan of a Tarwad is sought to be declared void against members not consenting thereto, if it is in excess of his powers as such karnavan, falls under this clause and not under S. 7 (4) (*c*) of the Act.[14] In Punjab, the Court-fee has been raised to Rs. 20, in suits by reversioners, under the Punjab customary-law, for declaration in respect of an alienation of ancestral property.[15]

917. BENAMI.—A suit for a declaration that plaintiff is the real decree-holder, and that the decree should be transferred to him is not a claim involving a consequential relief, and the plaint on a ten rupees stamp was sufficient.[16] The prayer as to transfer of the decree being superfluous and unnecessary was disregarded as a surplusage.

918. BENGAL TENANCY ACT.—Suits under S. 106, Bengal Tenancy Act, are purely declaratory, with a fixed Court-fee of Rs. 10 only.[17] A separate Court-fee of Rs. 10 is required in a suit under S. 106 Bengal Tenancy Act, in respect of each class of tenants.[18] Proviso to S. 111-A, provides for a declaration of right by persons dissatisfied with entries in record of rights. A declaratory relief is sufficient.[19] A suit for mere declaration that the entry is wrong is not chargeable with *ad valorem* Court-fee, if there is no relief claiming the entry to be a nullity.[20]

919. CANCELLATION OF DECREES. A suit for declaration that the decree is ineffectual and inoperative against plaintiff, has been held by BOMBAY, and CALCUTTA High Courts to fall under this article, involving no consequential relief.[21] A relief for the

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tions by widow, the prayer for the appointment of a receiver was not consequential upon the declarations prayed for).

(13) *Sankara Narayana* v. *Vijaya Raghunadha*, 7 Mad. 134=7 Ind. Jur. 595.

(14) *Chingachan Vitil Sankaran Nair* v. *Gopala Menon*, 30 Mad. 18.

(15) See Punjab Act, VII of 1922 (Appendix *infra*).

(16) *Ganeshi Lal* v. *Beni Pershad*, 9 I.C. 673=1 P.R. 1911=47 P.L.R. 1911=22 P.W.R. 1911.

(17) 7 I.C. 627=12 C.L.J. 638=15 C.W.N. 110; also see and *cf.* 18 I.C. 275=17 C.L.J. 417 and 22 C.L.J. 57.

(18) 30 I.C. 862=22 C.L.J. 57; and 50 I.C. 328=4 P.L.J. 297; also see 51 I.C. 767=4 P.L.J. 299; but see and *cf.* 9 Pat.L.T. 199.

(19) 11 C.W.N. 48 (50); 7 C.W.N. 314 (320)=30 Cal. 20.

(20) 48 I.C. 552; 44 Cal. 352=40 I.C. 96; and 118 I.C. 357; compare and see 50 I.C. 298=4 P.L.J. 302.

(21) 20 Bom. 736; 30 Cal. 788; but *cf.* 39 Cal. 704=15 I.C. 427=16 C.W.N. 838; also see 35 I.C. 797 (Rs. 10 Court-fee in a suit for declaration that a certain *ex parte* decree is invalid).

cancellation of a decree is not a declaratory relief only.[22] The LAHORE view is that where the decree is a nullity, it may be disregarded, but where plaintiff was a party to suit, a suit for declaration that the decree passed against plaintiff is based on fraud and deception, involves a consequential relief.[23] In Madras it has been held that a suit for a declaration that a compromise decree is obtained by fraud, and for re-opening the suit in which the compromise is recorded is liable to Court-fee under this Cl. 17-A, Sch. II.[24]

920. CANCELLATION OF DEEDS.—Section 39 of the Specific Relief Act, provides for the cancellation of instruments, by any person, against whom a written instrument is void, or voidable. The relief is open both to a party to the instrument, or a third party otherwise prejudicially affected by it.[24-a] A distinction is to be drawn, for the purposes of Court-fee, just as in suits for purposes of limitation, between documents which are null and void *ab initio*, and do not require to be set aside, and instruments executed by the plaintiff, or some one representing him, under circumstances which would make its cancellation necessary.[25] Where a declaration as to the invalidity of a transfer is sufficient for the plaintiff's protection, the CALCUTTA High Court has held it unnecessary for him to seek a consequential relief for its cancellation, and he is not bound to pay an *ad valorem* Court-fee on his plaint.[26] A suit solely to declare that a sale deed executed by the plaintiff is void and inoperative as against him, on the ground that he was made to execute it because of coercion, etc., need only be stamped with a Court-fee of Rs. 10.[27] But, there is a conflict of decisions on the point, as noticed in the comments under S. 7 (4) (*c*), *ante*, and the trend of authorities is in favour of the proposition that where plaintiff asks to avoid certain deeds, he may ask for cancellation of deed, and its delivery, in addition to prayer for declaratory relief, and this prayer for cancellation of deed will imply a consequential relief.[28] But a suit for cancellation of a

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(22) *Kalu Ram* v. *Babulal*, 1932 All. 485=139 I.C. 32=1932 A.L.J. 684; *cf.* 1933 All. 488 (F.B.).

(23) 102 I.C. 46=1927 Lah. 499=8 Lah. 531; 113 I.C. 908=1929 Lah. 448; 1929 Lah. 463=116 I. C. 895; 1932 Lah. 132=135 I. C. 499=13 Lah. 391; also see 73 I.C. 767=1923 Lah. 373 (suit for declaration that certain property is wakf, and that a decree obtained in respect of it shall not affect it).

(24) *Kulandi Pandichi* v. *Indran Ramaswami*, 1928 Mad. 416=51 Mad. 664.

(24-a) 27 Bom. 146.

(25) 14 Mad. 26; 30 All. 375; 30 Cal. 433; also see 15 Cal. 409 (421); 30 Mad. 18; and 12 Cal. 69; 23 Cal. 460; cited in 30 Cal. 433.

(26) *Umarannessa* v. *Jamirunnessa*, 76 I.C. 448=1923 Cal. 362=37 C. L.J. 499.

(27) 138 I.C. 147=9 O.W.N. 440; 1929 Nag. 71.

(28) 28 I.C. 79 (F.B.); 1929 Oudh 491; 33 I.C. 624 (holding that a consequential relief is implied); *cf.* 30 I.C. 18; 78 I.C. 382=1925 Lah. 90 (suits for pure declaration); also see and *cf.* 87 I.C. 660=1923 Mad. 713 (plaintiff content with relief for declaration).

void document, against plaintiff not a party to it,[29] or a suit for cancellation of a mortgagee bond by third party, does not fall under S. 7 (4) (*c*).[30]

921. CONTRIBUTION SUIT.—Where plaintiff sued for declaration that he will be entitled to contribution from defendants, if and when occasion arose, it was held that a Court-fee of Rs. 10 only was sufficient.[31]

922. CUSTODIA LEGIS.—Where possession of the property was, at the time, neither with the defendant, nor with the plaintiff, the property having been in *custodia legis*, and in the hands of an officer of Court, (the plaintiff himself as it so happened), the defendant not having been in possession, the plaintiff was held competent to seek for a declaration of his rights to property without asking that the property should be delivered to him; because if, as alleged, plaintiff is the person entitled to the estate of the deceased in the hands of the receiver of Court, nothing more was required to be done to secure to the plaintiff all his rights than the revocation of the order of the Court directing delivery of the property to the defendant, as that would enable the plaintiff to retain possession in his own right.[32] Similarly, where property in question was in the custody of the Collector, plaintiff was justified in asking for a bare declaration as to that property, although he had to sue for declaration and injunction as to other property in the same suit.[33] Where a Magistrate passes an order under S. 146, Criminal Procedure Code, a person claiming the property need only sue for a declaration.[34] Accordingly, where the plaintiffs claimed title to the disputed property by purchase at a sale in execution of a mortgage decree, and they took possession but were resisted by the defendants, and the Magistrate not being able to satisfy himself as to which of the parties was in possession of the subject of dispute, attached it under S. 146, Criminal Procedure Code, and some years later two suits were instituted by two sets of plaintiffs for declaration of their title and possession, it was held that though framed as suits for possession, to which Art 142, of the Limitation Act was applicable, the suits were really for declaration of their title under S. 42 of the Specific Relief Act, governed by Art. 120, of the Limitation Act.[35] Where compensation money is held in trust

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(29) 37 C.L.J. 499.

(30) 5 All. 331 (F.B.); 38 Mad. 922 (F.B.); 78 I.C. 782=1925 Lah. 90; 87 I.C. 660=1925 Mad. 164.

(31) 1922 Pat. 392=1 Pat. 1=3 P.L.T. 793.

(32) 27 Mad. 591.

(33) *Shidappa* v. *Rachappa*, 16 I.C. 1005=36 Bom. 628=14 Bom.L.R. 757.

(34) *Sakharam* v. *Tukaram*, 1927 Nag. 316=103 I.C. 351; also see *Administrator-General of Bengal* v. *Bhagwan Chunder*, 10 I.C. 531=15 C.W.N. 758.

(35) *Baikuntha Nath Sharma* v. *Bharat Chandra*, 31 I.C. 242=22 C.L.J. 283=20 C.W.N. 481; *Panna Lal Biswas* v. *Panchu Ruidas*, 65 I.C. 200=26 C.W.N. 432=49 Cal. 544=1922 Cal. 419; also see *Rajah of Venkatagiri* v. *Isakapalli Subbiah*, 26 Mad. 410; (cross suits for declaration of right to possession of property attached by magistrate, under S. 146, Cr. P. Code, in consequence of disputes relating to their possession).

for a person by the Court, a mere declaration of Court directing that the money was not any longer to be so held in trust for her, but was to be handed over to the petitioner was sufficient. The possession and control of the property being in *custodia legis*, Court-fee was not payable *ad valorem* on appeal for recovery of that sum.[36]

923. DECLARATION AS TO RENT.—Where certain tenants filed a suit against their landlord for commutation of grain rents into money rents, and the Deputy Collector fixed the rate at which commutation was to be made, the provision applicable to appeal by the landlord on the ground that the rate fixed was too low was Art. 17 (*iii*) or Art. 17 (*vi*) of Sch. II, to the Court-Fees Act, and not *ad valorem* on the difference between the amount fixed by the Deputy Collector and the amount which the appellant alleged to be correct.[37]

924. TWO DECLARATIONS.—Where the plaintiff sued for a declaration that a decree was null and void and that he was the manager of the property in suit, it was held that the suit was merely for two declarations without consequential relief and that a Court-fee of Rs. 10 for each declaration was sufficient.[38] Where there were two declarations asked for, and the second is a redundant prayer, it was held not to be a suit for a declaration with a consequential relief.[39]

925. DECLARATION AS TO RIGHTS.—Where the plaintiff prayed for a declaration that he was a duly appointed member of the committee of management of a certain charitable trust,[40] or that he is the rightful dharmakarta alleging that the tenants offer to pay rent to the rightful person, a Court-fee of Rs. 10 is sufficient.[41] Where the claim for money is coupled with a declaration of lien as equitable mortgagees, the proper fee chargeable on appeal as regards the declaration only, is Rs. 10, under S. 17 and Art. 17 (III) of the second schedule, of the Act.[42] A suit for declaration that the defendants were liable to pay certain amounts and for the further declaration that the plaintiff shall be entitled to recover those amounts from the defendants if and when the plaintiff is compelled to pay the same, is a suit for a declaratory decree without consequential relief for the purposes of the Court-Fees Act, though such a suit, not being contemplated by S. 42 of

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(36) *Thammayya Naidu* v. *Venkata Ramanamma*, 1932 Mad. 438=62 M.L.J. 541=1932 M.W.N. 420=35 M.L.W. 618=55 Mad. 641=139 I. C. 131.

(37) *Sandattikali* v. *Veerappa*, 78 I.C. 968=1924 Mad. 623=46 M.L. J. 450=19 M.L.W. 629=34 M.L.T. 219.

(38) *Lakshmi Narain* v. *Dip Narain*, 1933 All. 350=1933 A.L.J. 311.

(39) *Mahabir Prasad* v. *Shyam Behari Singh*, 3 Pat. 795=80 I.C. 655 =1925 Pat. 44.

(40) *Murza Hyderali* v. *Hussain Raza*, 24 I.C. 316.

(41) *Ramadas* v. *Hanumantha Row*, 36 Mad. 64=12 I.C. 449=21 M. L.J. 952.

(42) *The Simla Bank Corporation* v. *Narpat Rai*, 43 P.R. 1888.

the Specific Relief Act was held not maintainable.[43] A suit for declaration to establish plaintiff's right to obtain payment under a cheque, or at any rate for a declaration that the cheque was endorsed to him for valuable consideration, was held to fall under this article, when the bank on which the cheque was drawn was struck off as a party-defendant from the suit.[44] A suit for a declaration that the plaintiff may be declared holder of or entitled to an "Ayo", falls within Art. 17 (*iii*), Sch. II of the Act, in as much as it is a suit for a declaration of a status without a prayer for consequential relief.[45] A suit for declaration that a certain property belongs to the plaintiff, and is not liable to be sold in execution of a mortgage-decree passed in suit to which the plaintiff was not a party does not involve any consequential relief and comes within this article.[46] A suit for declaration that a plaintiff is liable to pay royalty or *Achu Pahsha* at a lower rate than that claimed by the defendant, falls under this article.[47] A suit not to recover, but to have the plaintiff's title to the land, of which he professes himself to be already in possession, affirmed falls under this article.[48] A suit for declaration that plaintiff is owner of property, which is in the possession of a third party, who does not deny plaintiff's title, but the defendant puts obstacles in the way of the plaintiff, is a suit for mere declaration.[49] A suit for a declaration that certain property belongs to the joint family, and that it be declared and established that the plaintiff held possession of the said property in partnership with the defendant, need only be stamped with a Court-fee of Rs. 10.[50] A suit for declaration of joint ownership falls under this article.[1] Where the plaintiff is in joint possession of immoveable property, whether such possession be actual possession of his share of the whole, or actual possession of a part coupled with constructive possession of the remainder, he is entitled to maintain a suit for declaratory relief with a view to remove a cloud on his title, and need not ask for consequential relief by way of partition.[2] A suit for declaration that certain mortgage is not binding on plaintiff, is one for a mere declaration and is governed by Art. 17-A (*i*), Sch. II, of the Act.[3]

926. APPEAL IN A SUIT FOR DECLARATION.—Where in an appeal arising out of a suit for a declaration and con-

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(43) *Rafiqud Din* v. *Asgar Ali*, 63 I.C. 38=1 Pat. 1.

(44) *Girdharilal Ratulal* v. *Palaniappa Mudali*, 1929 Mad. 572=119 I.C. 158.

(45) *Ma Su Twin* v. *Fatima Bibi*, 98 I.C. 196=5 Bur.L.J. 107=1926 Rang. 184 (F.B.).

(46) *Siri Ram* v. *Mathura Prasad*, 1925 Oudh 500.

(47) *Rayo Rappan Kutti* v. *Kalliyat*, 1924 Mad. 621.

(48) 2 P.R. 1889.

(49) *Gian Chand* v. *Bhagwan Singh*, 32 P.L.R. 745.

(50) *Siva Ram* v. *Narain Das*, (1884) 11 A.W.N. 11; also see *Brij Gopal* v. *Suraj Karan*, 1932 All. 560=1932 A.L.J. 466.

(1) *Meloriyya Pillai* v. *Thirumalai Pillai*, 21 M.L.J. 1022=36 Mad. 62.

(2) *Joynarain* v. *Suchitra Debya*, 65 I.C. 8=33 C.L.J. 592=26 C.W.N. 206.

(3) *Secretary of State* v. *Lakhanna*, 1933 Mad. 430=141 I.C. 80.

sequential relief, the relief sought is limited to the declaration, the appeal falls under Art. 17 of Sch. II, to the Court-Fees Act, and Court-fees are payable accordingly.[4] For instance, in a suit upon an *Ekrar* executed by the priest of an idol for recovery of arrears of maintenance and for declaration that the money due was realizable from the surplus of the *chawo* offerings to the idol, and recoverable from the defendant's successor in office, the original court passed a decree for arrears, but refused to make the declaration, and the plaintiffs appealed only against the order refusing the declaration, a Court-fee of Rs. 10 only was sufficient on the memo. of appeal.[5] Where in a suit for possession, the plaintiff appealed only against the conditional decree, the relief was taken to be for declaratory decree in appeal, to have the condition removed, and Rs. 10 Court-fee was sufficient.[6] An appeal from a decision of interpleader suit in respect of money, falls under this sub-clause and requires a Court-fees of Rs. 10 only. The appellant need only have the decree of the lower court set aside, in so far as it declares the title of rival claimants to the property in question, and the declaration of title will be followed in the usual course by the delivery of the property to him.[7]

927. VALUATION FOR PURPOSES OF JURISDICTION. —The proper valuation for purposes of jurisdiction of a suit for declaration that certain property is the absolute property of the plaintiff, and is not liable to partition is thirty times the *jama*.[8] In a suit for declaratory decree the jurisdictional value cannot be held to be higher than the value of the subject matter in dispute between the parties.[9] Where a claim to property attached in execution of a decree is dismissed, and the claimant files a suit within one year to avoid attachment, and to have his title to the property declared, the property has to be valued for purposes of jurisdiction not on the market-value but on value under S. 7, Cl. (5), of the Act.[10] The jurisdictional value of a suit for declaration is the statutory value in case of land, and the market-value in other cases.[11] In a suit to obtain a declaratory decree establishing plaintiff's title to inheritance, the actual value of the

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(4) *Neko Tewari* v. *Kishan Prasad Pandey*, 80 I.C. 563=2 P.L.R. 193=3 Pat. 640=1924 Pat. 582.

(5) *Girijanand* v. *Sailajanand*, 23 Cal. 645.

(6) *Rupchand* v. *Fethchand*, 33 All. 705=11 I.C. 977=8 A.L.J. 821.

(7) *Brijnarain* v. *Balmiki Pershad*, 61 I.C. 820=1921 Pat. 305.

(8) *Sohan Singh* v. *Devi Singh*, 46 I.C. 490=81 P.R. 1918.

(9) *Kœrakkattidathil Ryrappan* v. *Kalliyatt Thazhath Veetil*, 79 I.C. 343=46 M.L.J. 377=1924 Mad. 621; also see *Karak* v. *Kalliyat*, 70 I.C. 343; *Venkatachaliar* v. *Srinivasa*, 75 I.C. 115.

(10) *Arumugha Mudaliar* v. *Venkatachala*, 1933 Mad. 439=37 M.L.W. 552=1933 M.W.N. 402=64 M.L.J. 568.

(11) *Chingacham Vitil Sankaran Nair* v. *Gopala Menon*, 30 Mad. 18 and *Mohini Mohan* v. *Gour Chunder*, 56 I.C. 762=1921 Pat. 32 (value of property likely to be affected by the declaration); *Vasidreddi* v. *Marupudi*, 101 I.C. 379=50 Mad. 646=1927 Mad. 563=52 M.L.J. 381=25 M.L.W. 640 (value of suit for declaration as to validity of adoption is the market-value of property affected).

estate, is the value of the subject-matter[12] and not according to special rules.[13]

928. **ART. 17 (iv): SUIT TO SET ASIDE AN AWARD—Art. 17 (v) Bombay; Art 17-A (ii) Madras.**—The suit contemplated by this article is the suit to set aside a private award, as distinguished from an award on a reference through Court. An award on a reference through Court is set aside by an application within the time prescribed (10 days) under Art. 158 of the Limitation Act, and the Court-fee on such application is that prescribed by Sch. II, Art. 1, *ante*.

929. A memorandum of appeal, from the decision of the District Judge awarding compensation acquired under the Land Acquisition Act, should be stamped with an *ad valorem* Court-fee under Sch. I, Art. 1, and not with a fixed fee of Rs. 10, under Art. 17 (*iv*), of Sch. II, of the Act.[14]

930. For the purpose of JURISDICTION, the VALUE OF THE SUBJECT-MATTER OF A SUIT TO SET ASIDE AN AWARD is the actual value of the interest affected by the award, and involved in the suit; *e.g.*, the amount which the plaintiff is directed by the award to pay.[15] For purposes of Court-fee no distinction is to be made in the value of the subject-matter of the award.[16] As regards jurisdiction, the MADRAS High Court held in *Keshava Sanabhaga* v. *Lakshminarayana*,[17] that in a suit by a reversioner for a declaration that in fact there was no adoption, or in the alternative, if the adoption was made it was invalid, the value of the suit for purposes of jurisdiction was the value of the estate in question, or "the value of the interest that would be lost to the alleged adopted minor if the adoption be declared invalid." This is opposed to the ALLAHABAD view in *Sheo Deni Ram* v. *Tulshi Ram*,[18] and the BOMBAY view in *Bai Rewa* v. *Keshadram*[19] and in *Bai Machbai* v.

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(12) *Bai Mahkor* v. *Bulakhi Chaku*, 1 Bom. 538.

(13) *Kalu Bin Bliwaji* v. *Vishram Mawaji*, 1 Bom. 543; also see *Rachappa* v. *Shidappa*, 50 I.C. 280=43 Bom. 507 (P.C.).

(14) *Secretary of State* v. *Baij Nath*, 138 I.C. 199=1932 Oudh 224; compare *Secretary of State* v. *Basawa Singh*, 17 I.C. 764=57 P.R. 1913=17 P.L.R. 1912 (*Held*, that an appeal by the Secretary of State against an award by the Divisional Judge, under the Land Acquisition Act, falls according to the Punjab Chief Court, under this sub-clause, and a Court-fee of Rs. 10, is adequate, S. 8 of the Court-Fees Act being applicable only to appeals by person claiming compensation.

(15) *Venkatachelam* v. *Srinivasa Aiyar*, 75 I.C. 115=1924 Mad. 84=18 L.W. 399=1923 M.W.N. 747.

(16) *Phul Kumari* v. *Ghanshyam Misra*, 35 Cal. 204=7 C.L.J. 36; 12 C.W.N. 169.

(17) 6 Mad. 192=7 Ind. Jur. 186.

(18) 15 All. 378=1893 A.W.N. 137.

(19) 1895 P.J. 228.

Bai Hirbai.[20] The CALCUTTA High Court's practice is to the same effect, *viz.*, that the plaintiff can be permitted to value the relief, and the valuation given by him is taken to determine the forum.[21] The MADRAS High Court applies the principle of the decision of their Lordships of the PRIVY COUNCIL, in the case of *Rachappa* v. *Shiddappa,*[22] to cases falling within Art. 17, Cl. (4), although the case before the Judicial Committee was one falling within Art. 17, Cl. (3). Their Lordships held that when a fixed fee is payable, regard should be had to the real value of the property for the purposes of jurisdiction, and that there is no warrant in law in such cases for what is described as notional value of property.

931. ART. 17 (v): SUIT TO SET ASIDE AN ADOPTION—Art. 17 (vi), Bombay; Art. 17-A (ii), Madras.—The words "to set aside an adoption" were taken from the Indian Limitation Act, 1859, and these words have not been amended, although the present wording of the Limitation Act has been altered to "suit to declare that an alleged adoption is invalid, or never in fact took place," which is an improvement. The Madras Amendment provides for a "suit to obtain a declaration that an alleged adoption is invalid, or never in fact took place, or to obtain a declaration that an adoption is valid."

932. VALUATION OF SUITS, FOR JURISDICTION.—The ALLAHABAD High Court holds that suits to set aside adoption have to be valued by the plaintiff at his option, under S. 7 (iv) (*c*), of the Act.[23] The BOMBAY view is that a suit to establish adoption, independently of any claim to property, falls under Sch. II, Art. 17 (v),[24] and, a suit to obtain a declaration that an adoption was invalid, falls under S. 7 (iv) (*c*),[25] and plaintiff can put his own valuation in a suit for declaration with consequential relief.[26] The CALCUTTA Court holds *ad valorem* Court-fee leviable in suits to set aside adoption, on plaintiff's valuation,[27] and the case does not fall under Art. 17 (v).[28] The LAHORE High Court holds that a suit for declaration that an adoption shall not affect plaintiff's reversionary rights, is not a suit for annulling the adoption, within the meaning of the rules.[29] The MADRAS High Court observes that

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(20) 10 I.C. 816=35 Bom. 264=13 Bom.L.R. 251.

(21) *Prohlad Chandra* v. *Dwarkanath,* 6 I.C. 636=37 Cal. 860=14 C.W.N. 29.

(22) 50 I.C. 280=43 Bom. 507=46 I.A. 24 (P.C.) applied in *Venkatachellam* v. *Srinivasa Aiyar,* 75 I.C. 115=1924 Mad. 84, *supra.*

(23) 15 All. 378=13 A.W.N. (1893), 147.

(24) 1876 P.J. 142; 1 Bom. 248.

(25) 35 Bom. 264=10 I.C. 816.

(26) 36 Bom. 268=16 I.C. 1005; also see *Bai Moch Bai* v. *Bai Hirabai,* 35 Bom. 265=100 I.C. 816.

(27) *Prahlad* v. *Dwarka,* 68 I.C. 636=37 Cal. 860=14 C.W.N. 929.

(28) 22 W.R. 338.

(29) 84 I.C. 486=5 Lah. 440=1925 Lah. 229=6 L.L.J. 585.

a suit for declaration that an adoption was not made, and that if it was made, it was invalid, must be valued at the interest that would be lost to the alleged adopted minor, if the adoption be invalid.[30] The NAGPUR Court has held that a suit for declaration of validity or invalidity of adoption is a simple declaratory suit, if the plaintiff is already in possession of the property;[31] and, if it affects title to property Court-fee is payable on the value of the property.[32] The PATNA view is that the prayer as to declaration of title as adopted son, is not a surplusage in a claim to recover possession, and Court-fees must be paid on the value of the suit which falls under S. 7 (iv) (*c*), of the Act.[33]

933. Briefly, in DIFFERENT KINDS OF ADOPTION SUITS, three separate provisions have to be considered.

(1) A suit for simple declaration of the validity, or invalidity, of adoption, not involving any consequential relief, falls under Art. 17, Cl. (*iii*), of second schedule.

(2) A suit to set aside an adoption, without any further or other relief, falls under Art. 17 (*v*), even though title is involved.[34]

(3) Declaratory suits for validity or invalidity of an adoption, where there is a prayer for consequential relief, fall under S. 7 (iv) (*c*), of the Act, and have to be valued for Court-fee purposes at plaintiff's option.[35] This view of ALLAHABAD, BOMBAY, CALCUTTA and PATNA Courts is not shared by MADRAS and NAGPUR, which Courts hold that the value of the relief is the value of the property affected by the declaration of validity or invalidity.

934. MADRAS AMENDMENT.—*In re* Ramaswami Asari, it was held that a relief with regard to the validity or otherwise of an adoption is capable of valuation.[36] The value of the relief is the value of the property which the adopted boy would get if the adoption were true and valid.

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(30) 6 Mad. 192; followed in 52 Mad. 340=113 I.C. 363=1928 Mad. 1294.

(31) 43 I.C. 64=15 N.L.R. 24.

(32) 58 I.C. 965 (1).

(33) 56 I.C. 422=1922 Pat. 6=1923 Pat. 100.

(34) 1876 B.P.J. 142; 1 Bom. 248; 43 I.C. 64; 5 Lah. 440; also see 36 Bom. 628=16 I.C. 1005.

(35) 15 All. 378; 10 I.C. 816=35 Bom. 264; 36 Bom. 628=16 I.C. 1005; 6 I.C. 636=37 Cal. 860; 22 W.R. 338; 56 I.C. 422=1922 Pat. 6; and 1923 Pat. 100; contra 6 Mad. 192; 52 Mad. 340=113 I.C. 363=1928 Mad. 1294; 103 I.C. 268 (*b*)=1927 Nag. 256; 120 I.C. 408; 1930 Nag. 20; 123 I.C. 417.

(36) 52 Mad. 340=56 M.L.J. 107=1928 Mad. 1294; also see *Vasi Reddi Veeramma* v. *Marupudi*, 50 Mad. 646.

Art. 17 (vi). Suits where it is not possible to estimate at a money value, the subject-matter of the suit. [Art. 17 (vii) Bombay; and Art. 17-B (Madras).]

935. **APPLICABILITY.**—This article cannot apply to the case of property which clearly has a money-value although it may be difficult to estimate such value correctly. Where the plaintiff-appellant sought to render certain property in the hands of the defendant liable for a certain money claim, it was held that *ad valorem* Court-fee was payable.[37] Similarly, where the plaintiff alleged that he was the duly elected mahant in place of another, and sued to recover possession of the properties attached to the mutt, it was held that the case was governed by S. 7 (v) of the Act, and not by Art. 17 (*vi*), Sch. II, but that the temple should be left out of account as having no market-value.[38] The word "estimate," involves an idea of approximation. To bring a case within the scope of this clause it must be established that it is not possible even to state approximately a money-value for the subject-matter in dispute.[39] The moment it is shown, that a plaint, or a memorandum of appeal arises in the suit where it is not possible to estimate the money value of the subject-matter in dispute, and which is not otherwise provided for by the Act, the plaintiff can claim that the Court-fees payable are Rs. 10 (now raised to Rs. 15, in some provinces).[40] But where the suit comprised a claim for arrears of maintenance in the guise of declaration, it was held to be governed by S. 7 (1), and not by Art. 17, Cl. VI, of the second schedule.[41]

936. **PARTITION SUITS AND APPEALS.**—In partition suits, pure and simple, where a co-owner in joint possession, sues for his separate share, a consensus of opinion in different High Courts, now applies Art. 17, Cl. 6, to determine the amount of Court-fees payable. The leading case on the subject is *Kirty Churn Mitter* v. *Aunath*,[42] which has been generally followed in later CALCUTTA cases,[43] and the position is firmly established that a suit, for partition of joint property, is with reference to the matter of Court-fees, governed by this clause and the proper Court-fee payable is Rs. 10, (raised to Rs. 15, by

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(37) *Sahir Hussain* v. *Farzand Hassan*, 54 All. 608=138 I.C. 622=1932 A.L.J. 387=1932 All. 406.

(38) *Parsottamanand Giri* v. *Mayanand Giri*, 1932 A.L.J. 777=1932 All. 593.

(39) *Banwari Lal* v. *Sheo Sanker Misser*, 1 I.C. 670=13 C.W.N. 815; compare *Trinayani Dasi* v. *Krishna Lal*, 14 I.C. 724=39 Cal. 906 (relief sought could be valued approximately).

(40) *Jyoti Prosad Singh* v. *Jogendra Ram Roy*, 1928 Cal. 878=32 C.W.N. 1105.

(41) *Mt. Udobai* v. *Ram Autar Singh*, 1934 Lah. 150 (1).

(42) 8 Cal. 757=11 C.L.R. 95.

(43) 6 C.L.J. 651=12 C.W.N. 37; 10 I.C. 463=15 C.L.J. 443; 29 Cal. 762; 85 I.C. 898 *Rajani Kant* v. *Rajabala Dasi*, 52 Cal. 128=1925 Cal. 320.

the amendment of 1922).[44] But a person who sues for partition and is out of possession must pay *ad valorem* fee upon his plaint.[45] The ALLAHABAD High Court has followed this view,[46] and in PUNJAB, Art. 17 (6) has been applied in suits for simple partition.[47] A suit for declaration that certain property is plaintiff's absolute property and is not liable to partition, falls under Art. 17 (*vi*), Sch. II, of the Act and the Court-fee payable is one of Rs. 10 only.[48] Where in a suit for partition, after a preliminary decree had been passed, the Court on the application of one of the co-sharers directed that the property being incapable of partition should be sold, the memorandum of appeal against this order was held to require a Court-fee of Rs. 10 only, under Art. 17 (*vi*), of Sch. II, of the Act.[49] The MADRAS Full Bench case of *Rangiah* v. *Subrahmania*[50] has also settled this point in accordance with the Calcutta cases: and it has been held in later cases that the correct method of regarding the relief claimed in a suit for partition by metes and bounds by one member of a Hindu joint family which has already become divided in status against the other members is that it is merely a prayer to change the form of enjoyment and can only be valued by deducting from the value of the plaintiff's share as ascertained in the partition the value of his beneficial enjoyment as co-parcener before partition. In such a case it is impossible to estimate the money value of the suit, and the suit is governed by Art. 17 (6), of Sch. II, to the Court-Fees Act.[1] So also a suit for partition of immoveable property when the plaintiff, a Mohammadan co-sharer, is not a member of a joint family so as to make S. 7 (iv) (*b*), of the Court-Fees Act apply, but alleges that he is in joint possession and claims separate possession of his share, the article applicable is Art. 17, Cl. (6), of the second schedule.[2]

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(44) 1928 Cal. 878=32 C.W.N. 1105; also see in the matter of *Nand Lal Mukerjee*, 35 C.W.N. 242; and *Beni Madhab* v. *Gobinda Chandra*, 46 I.C. 165=22 C.W.N. 669 (Court-fee payable in partition suit where accounts are claimed).

(45) *Ahmaduddin* v. *Amiruddin*, 44 I.C. 216.

(46) 28 All. 340; 34 All. 184=8 A.L.J. 1329=13 I.C. 185.

(47) 1930 Lah. 839=123 I.C. 525; 96 P.R. 1916=34 I.C. 857; also 62 I.C. 979; and 29 P.L.R. 322; and *Mt. Hajaram* v. *Muhd. Shafi Khan*, 1933 Lah. 780 (2) (Court-fee under Sch. 2, Art. 17 (6) in a suit for possession by partition, where plaintiff is in joint possession of part of property in dispute); also see *Durga Devi* v. *Parbati*, 141 I.C. 175=1933 Lah. 208 (partition suit—allegation by plaintiff that property is joint—Court-fee of Rs. 10 is sufficient).

(48) *Sohan Singh* v. *Devi Singh*, 115 P.W.R. 1918=81 P.R. 1918=119 P.L.R. 1918.

(49) *Lachman Das* v. *Baghu Ram*, 100 I.C. 17=1927 Lah. 189.

(50) 8 I.C. 512 (513)=21 M.L.J. 21 (27, 30) (F.B.).

(1) *Prathipati Suryanarayana* v. *Seshayya*, 90 I.C. 843=1926 Mad. 122; see and *cf. Srinivasa Iyer* v. *Krishnaswamy Iyer*, 1931 Mad. 49=129 I.C. 462 (when a co-parcenary has been disrupted, it cannot be described as a joint family, and S. 7 (iv) (*b*) cannot apply).

(2) *Gill* v. *Varada Raghavaya*, 55 I.C. 517=43 Mad. 396=38 M.L.J. 92=1920 M.W.N. 124; and *Kurshit Khatun* v. *Hyder Khan Saheb*, 75 I.C. 93=1923 M.W.N. 564=1924 Mad. 207; also see *Ahmuddin Tamijuddin* v. *Amirruddin*, 44 I.C. 216.

The PATNA High Court also holds a Court-fee of Rs. 10, sufficient in a plain suit for partition.[3] But where in a partition suit, in the forefront of his prayer in the plaint, the plaintiff asks for a declaration of title and possession, he is claiming in the guise of a partition suit a declaration of his title and must pay an *ad valorem* Court-fee.[4] The NAGPUR Judicial Commissioner's Court,[5] and the Judicial Commissioner N.-W.F.P.[6] have followed the Calcutta view in applying Art. 17 (vi) to such suits. But it has been held by the Nagpur Commissioner's Court, that the mere form and language of a plaint in a suit of this nature is not the final test. In deciding the question of Court-fees in a suit for partition, the Court should not confine itself to the form of the suit, and the allegations in the plaint, but should look to the circumstances appearing from the pleadings, and determine whether the suit is in substance one to enforce a right to share in joint property or merely to affect a change in the mode of enjoyment, and if the suit is in substance one of the former character the Court-fees should be levied *ad valorem* on the market-value of the plaintiff's alleged share in the joint family property.[7] The RANGOON High Court, has held that since in a suit for partition by a co-sharer claiming to be in possession of a part of the property, Court-fee of Rs. 10, and not *ad valorem* Court-fee is payable, the defendant appellant in such a suit is also entitled to file his appeal on the same Court-fee.[8] The SINDH Judicial Commissioner's Court takes the same view.[9] The only conflicting ruling is by the BOMBAY High Court,[10] where Beaman, J., observed that a suit to obtain by means of partition a slice of land, the approximate value of which can easily be stated in terms of money, appears to be plainly a suit for the possession of land. *Batchelor, J.*, also held that S. 7 (iv) (*b*) is intended merely for suits to enforce an abstract right "to *share* in any joint property," and not the right to "a share" in property: The proposition may, therefore be taken as well established, that Rs. 10 (raised to Rs. 15), Court-fee, under this Art. 17, Cl. (6), is sufficient, where the plaintiff in actual or constructive possession, is not claiming anything more than a

(3) *Gobind* v. *Parmeshwar*, 1921 Pat. 487=49 I.C. 115; 51 I.C. 77; 56 I.C. 570; 58 I.C. 236=1921 Pat. 78; 65 I.C. 294=1923 Pat. 113; and 79 I.C. 913; also 1927 Pat. 145=106 I.C. 620=6 Pat. 506; and 1930 Pat. 1=8 Pat. 818=120 I.C. 770=10 P.L.T. 491.

(4) *Kanhaya Lal* v. *Baldeo Lal*, 85 I.C. 538=1925 Pat. 703; following, 1923 Pat. 113=65 I.C. 294=6 P.L.J. 662=3 P.L.T. 293.

(5) 81 I.C. 643=1924 Nag. 105; but *cf.* 81 I.C. 760=1924 Nag. 86 =20 N.L.R. 43.

(6) No. 13, Judicial Record, Vol. II.

(7) *Bhagwanappa Wani* v. *Shivalla Wani*, 101 I.C. 770=23 N.L.R. 73=1927 Nag. 248; following 81 I.C. 760=1924 Nag. 86=20 N.L.R. 43.

(8) *Abdul Rahman* v. *Crisp*, 1930 Rang. 164 followed 28 All. 340=3 A.L.J. 181=1906 A.W.N. 38; 12 C.W.N. 37=6 C.L.J. 651; 10 I.C. 463=15 C.L.J. 443=38 Cal. 681; 34 All. 184=13 I.C. 185; 43 Mad. 396=55 I.C. 517; compare *Maung Shive Bon* v. *Maung Pu*, 9 Bur.L.T. 97=35 I.C. 731; also compare *Ma Fatima* v. *Molvin Bibi*, 7 Rang. 164= 1929 Rang. 211=118 I.C. 122.

(9) *Mongammal* v. *Tola Ram*, 16 I.C. 773 (Sind); also see *Haji Yusaf* v. *Ghulam Hussein*, 16 I.C. 771.

(10) *Dagdu Sakharam* v. *Tota Ram Narayan*, 4 I.C. 243=33 Bom. 658.

change in the mode of enjoyment, when he seeks by a suit for partition of joint property, a separate possession of his share. Where the plaint in a suit alleging previous partial partition and a divided status, claims actual partition by metes and bounds, the plaintiff being in constructive possession, Art. 17 (vi), applies.[11] In Madras, this corresponds to Art. 17-B, Sch. II.[12]

937. Where in an APPEAL ARISING OUT OF A PARTITION SUIT, there is no dispute about the share to which each co-sharer is entitled, and the appeal seeks only to impeach the mode of partition, it is not possible to estimate at a money value the subject-matter in dispute in appeal and the case would come within the purview of Art. 17 (vi) of the second schedule of the Court-Fees Act.[13] Where plaintiff sued for partition of certain property alleging joint possession, but the Court decided in favour of defendant's plea that plaintiff was out of possession, the plaintiff appealing against the decree dismissing his suit for not making up the deficiency of Court-fee ordered, can prefer the memorandum of appeal under Sch. II, Art. 17 (vi), on a Rs. 10 Court-fee stamp, without challenging the order as to Court-fee.[14] Similarly, where in a suit for partition the finding of the trial Court was to the effect that the plaintiff was in joint possession as alleged by him, the defendant-appellants were liable to pay a Court-fee of Rs. 10 only.[15] Where after the passing of the preliminary decree in a suit for partition the Court passed an order that a property incapable of partition should be sold, a memorandum of appeal by a co-sharer requires a Court-fee stamp of Rs. 10 only under this clause.[16] Where in a partition suit, the trial Court has directed the partition of certain property which was alleged by the plaintiff to be wakf, and as such impartiable, the decision of the Court amounts to a mere declaration that certain property is partible, and no decree for possession having yet been passed, the Court-fee stamp affixed on the memorandum of plaintiff's appeal with reference to that property need not be *ad valorem*.[17]

938. **SUITS UNDER S. 92, CIVIL PROCEDURE CODE, 1908.**—(i) ALLAHABAD—The reliefs claimed in a suit under S. 92, Civil Procedure Code, are incapable of being estimated at a money value, and are therefore chargeable under Art. 17, Cl. (vi), of the Court-Fees Act.

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(11) *Suryanarayana* v. *Seshayya*, 90 I.C. 483=1926 Mad. 122; reld. on 8 I.C. 512=21 M.L.J. 21 (F.B.); also see *Secretary of State* v. *Lakhanna*, 1933 Mad. 430; followed in *Manikkam Pillai* v. *Murugesam Pillai*, 1933 Mad. 431.

(12) 1933 Mad. 430; and 1933 Mad. 431, *supra*.

(13) *Harcharan Das* v. *Sukhraj Das*, 62 I.C. 979; also see *Fatteh Chand* v. *Bilasrai*, 34 I.C. 587=96 P.R. 1916.

(14) *Jai Pratap Narain Singh* v. *Rabi Pratap*, 1930 All. 443=124 I. C. 708=1930 A.L.J. 984=52 All. 756.

(15) *Nikka* v. *Fazl Dad Khan*, 1930 Lah. 839=123 I.C. 525=31 P.L. R. 315.

(16) *Lachman Das* v. *Bachu Ram*, 100 I.C. 17=1927 Lah. 189.

(17) *Rikhikesh* v. *Mela Ram*, 1931 Lah. 170=32 P.L.R. 304=131 I. C. 283.

In *Thakuri* v. *Brahma Narain*,[18] where the plaintiffs prayed that certain property might be declared as endowed property, and they further prayed that they should be appointed superintendents of the property, and the defendants should be forbidden from interference with the discharge of the plaintiff's duties as superintendents, the suit was not treated as a suit for possession but one in which the subject-matter could not be valued, and which fell within Art. 17, Cl. vi of the second schedule of the Court-Fees Act,[19] except so far as the prayer for injunction was concerned, which fell under S. 7 (iv) (*d*), of the Act.[20] The mere fact, however, that the plaintiffs in a suit, under S. 92, Civil Procedure Code, may ask for an account to be taken from the trustees, and that the trustees may be compelled to refund moneys alleged to have been misappropriated by them, does not take the case out of the purview of Art. 17, Cl. (vi) of the second schedule, and render the plaintiff liable to pay an *ad valorem* Court-fee on that part of their plaint.[21] In *Ghazaffar Hussain* v. *Yawar Hussain*, it was observed that if the trustees cannot reduce the property into possession after a decree appointing them as trustees, and directing them to bring the properties affected by the trust into possession, is passed, then they must file a suit for possession. A declaratory suit for dismissal of a trustee, entitling recovery of trust property from alienee requires a Court-fee for Rs. 10 only.[22]

(*ii*) CALCUTTA.—A suit for public charities, under S. 92, Civil Procedure Code, generally involves a question upon which no pecuniary value can be placed, and therefore, such a suit falls within the purview of Art. 17, Cl. (vi), Sch. II, to the Act.[23] The mere fact that the plaintiff asks for an account to be taken from the trustees does not take the case out of the purview of that article.[24]

(*iii*) LAHORE.—Where a suit was instituted under S. 92, Civil Procedure Code, and the relief claimed was (1) that the present *mahant* may be removed, and a new *mahant* may be appointed in his place, and (2) that, along with the mahant so appointed a committee may be formed to fulfil the objects of the trust, (3) the property of the trust may be made over to the new *mahant*, and the newly appointed committee, and a list of the said property may be prepared, and (4) there was further prayer about the settling of a proper scheme, it was held that there was nothing in the reliefs claimed which would take the case out of the

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(18) 19 All. 60=16 A.W.N. (1896), 187 (*a*).

(19) 19 All. 60, *supra.*; followed *Delroos Banoo Begum* v. *Asghur Ally*, 15 Bom.L.R. 167; and *Burao Mirza* v. *Jones*, 10 Cal. 599.

(20) 19 All. 60, *supra.*

(21) *Girdhari Lal* v. *Ram Lal*, 21 All. 200=19 A.W.N. (1899) 32.

(22) 28 All. 112; (also see *Sajedur Raja Choudhry* v. *Gour Mohun Das*, 24 Cal. 418 (426); *Sajedur Raja* v. *Baidyanath*, 20 Cal. 816; *Chintamon* v. *Dhondo*, 15 Bom. 612; and *Subbayya* v. *Krishna*, 14 Mad. 186).

(23) *Ramrupdas* v. *Sujaramdas*, 7 I.C. 92=14 C.W.N. 932.

(24) *Ibid.* 7 I.C. 92=14 C.W.N. 932; compare *Govandas Kasandas* v. *Dayabhai*, (1885) 9 Bom. 22 (24); (*Held*, that where in addition to the reliefs claimed under S. 92, a relief for an *account* is also asked for, the suit is chargeable with a Court fee under S. 7 (4) (*f*) of the Court Fees Act.

purview of Art. 17, Cl. (vi), of the Court-Fees Act and that a Court-fee of Rs. 10 alone was sufficient.[25] In a suit for removal of *mahant*, and for direction of *wakf* property to be made over to a new *mahant*, it was not necessary to stamp the plaint with a Court-fee stamp calculated *ad valorem* on the value of the trust property, as the plaintiffs sought nothing for themselves but merely the removal of the defendant from the office of the *mahant* which would involve his ejectment from the immoveable property of which he was in possession in that capacity.[26]

(*iv*) MADRAS.—A suit for removal of karnavan is held to come within this article.[27] A suit under S. 92, Civil Procedure Code praying that the defendant trustee should refund to the trust a specified amount misappropriated by him and also that certain properties should be handed over to the new trustees to be appointed under the scheme to be framed by the Court falls under Art. 17, Cl. (vi) of Sch. II, to the Court-Fees Act;[28] and the Court-fee payable is only Rs. 50, under Art. 17, Sch. II. "It would be a hardship to worshippers who bring suits under S. 92, Civil Procedure Code, in order to see that the trusts are properly carried out, and that the trustees do not appropriate the moneys belonging to the trust or abuse the trust, to have to pay Court-fees upon such large sums of money. It will practically prevent them from bringing such suits."[29] Plaints in suits under S. 92, Civil Procedure Code, are in most cases incapable of valuation.[30] In *Rajagopala Naidu* v. *Rama Subramania Ayyar*,[31] it was held that a temple even if it is to be regarded as a house, has no market-value within the terms of S. 7, Cl. (v) (*e*), of the Court-Fees Act, and hence a suit for recovery of possession of the temple properties by a person claiming as trustee against another person also claiming as trustee falls under Sch. II, Art. 17, Cl. (*vi*), of the same Act. Under the Madras High Court Fees Rules, 1925, such a suit however small its value may be, should bear a minimum Court-fee of Rs. 150 and an *ad valorem* scale for suits above Rs. 10,000.[32]

(*v*) RANGOON.—A suit by a *phongyi* to recover possession of a Kyaung falls under this article.[33]

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(25) *Beli Ram* v. *Ishar Das*, 110 I.C. 264=8 Lah. 730=1928 Lah. 113 =29 P.L.R. 97.

(26) *Gopidas* v. *Lal Das*, 97 P.R. 1918=47 I.C. 983=173 P.W.R. 1918.

(27) *Govinda* v. *Krishna*, 4 Mad. 146; *Krishna* v. *Rama*, 11 Mad. 266.

(28) *Sudalaimuthu Pillai* v. *Peria Somasundaram Pillai* 87 I.C. 25= 1925 Mad. 722=48 M.L.J. 514=1925 M.W.N. 104; also see *Ramanuja Naidu* v. *Muthu Allagappa Chetty*, 85 I.C. 801=1924 Mad. 882=47 M.L.J. 656 (suit for removal of a trustee for appointment of fresh trustee, and for framing a scheme, with prayer for injunction, taken to be under S. 92).

(29) *Ibid.* 87 I.C. 25, *supra*.

(30) *Swaminatha Ayyar* v. *Guruswami Mudaliar*, 105 I.C. 119=1927 Mad. 940; follows 7 I.C. 92=14 C.W.N. 932=12 C.L.J. 211.

(31) 74 I.C. 198=46 Mad. 782=1924 Mad. 19 (F.B.).

(32) 105 I.C. 119=1927 Mad. 940=53 M.L.J. 457=26 M.L.W. 378 (Original Side of High Court).

(33) *Konma* v. *Einda*, 57 I.C. 953=13 Bur.L.T. 40.

939. **SUITS NOT FALLING UNDER S. 92, CIVIL PROCEDURE CODE.**—A suit for declaration that property is *wakf* does not come under S. 92, Civil Procedure Code, as it is not a suit for administration of the *wakf* property or for the removal of the trustees of that property.[34] Where a person sues as beneficiary under certain trusts to recover certain properties forming subject-matter of trust which had been alienated by certain trustees, the case does not fall under Art. 17-B, but the Court-fee must be paid under S. 7 (iv) (*c*) read with the proviso added to it by the Madras Court-Fees Amendment Act V of 1920, and should be calculated in the manner provided by paragraph 5 of the section.[35] Where the disciples of a mutt brought a suit alleging that the defendant was in possession of the mutt under a false claim of title as the successor to the late Jeer, and praying for a declaration to that effect, and that an appointment to the vacant office of Jeer be made by the Court, it was held that S. 539, (Old Code), was inapplicable to the suit, and that the suit was not maintainable without consequential relief being prayed for.[36] A suit by a plaintiff for a declaration that he is the *sajjadanashin* of a dargah, and for possession of its properties is governed by S. 7, Cl. (v) of the Court-Fees Act, and not by Art. 17 (vi) of Sch. II to the Act, and an *ad valorem* Court-fee is payable on the plaint.[37]

940. **RELIGIOUS ENDOWMENTS ACT, 1873.**—A suit under S. 14 of Act XX of 1863, against the superintendent of a religious endowment for misfeasance is a suit which for the purpose of payment of Court-fees falls within Art. 17 (vi) of the second schedule of the Act, as it is not one in which it is possible to estimate at a money value the subject-matter of the suit, and is not otherwise provided for in the Court-Fees Act.[38] In suits under S. 14 of the Religious Endowment Act, the plaint is to be stamped with a Court-fee of Rs. 10;[39] but Court-fee would be payable *ad valorem*, where the suit claims damages also.[40] Similarly, a plaint containing a claim to remove the manager of a religious institution, based on the allegation that the institution is a private one, and is founded and maintained by the plaintiff's ancestors, and that the plaintiff alone has the power of appointing and dismissing the manager who refuses to leave it, is not main-

(34) *Shihan* v. *Abdul Alim*, 1930 Cal. 787=34 C.W.N. 1129=53 C. L.J. 91=130 I.C. 369.

(35) *Venkata Lal* v. *Kosaldasu Bavaji*, 1931 Mad. 24=33 M.L.W. 206 =130 I.C. 449=61 M.L.J. 39.

(36) *Strinivasa Ayyangar* v. *Strinivasa Swami*, 16 Mad. 31=2 M.L.J. 139; compare *Ram Das* v. *Hanumantha Rao*, 36 Mad. 364=12 I.C. 449 (Possession of temple properties with tenants willing to attorn to lawful manager or *Dharmakarta* suit not barred under S. 42, Specific Relief Act for want of consequential relief).

(37) In re *Syed Mahamad Gouse*, 88 I.C. 209=1925 Mad. 804=48 M. L.J. 571.

(38) *Muhammad Sirajul Haq* v. *Imamuddin*, 19 All. 104=16 A.W.N. (1896), 189.

(39) *Veerasami Pillay* v. *Chokappa Mudaliar*, 11 Mad. 149, *Note*.

(40) *Srinivasa* v. *Venkata*, 11 Mad. 148 (151).

tainable on a stamp of Rs. 10 only, but requires an *ad valorem* Court-fee.[41] In Madras, suits relating to religious endowments of a public nature are now provided under Art. 17 (iii) Madras Act. The Court-fee leviable on an application to modify or set aside the decision of the Board of Commissioners, under S. 84 (1) of the Madras Hindu Religious endowments Act is Rs. 15, under Sch. II, Art. 17 (1); Arts. 17-A and 17-B are not parts of Art. 17, and cannot apply to such an application.[42]

941. **RESTITUTION OF CONJUGAL RIGHTS.**—The Art. 15 in the Court-Fees Act prescribing a fixed Court-fee of Rs. 5 for such suits has been repealed by the Civil Procedure Code, but there is nothing to show that it does not come under Art. 17, Cl. (vi) of the Court-Fees Act.[43] It was held by the Allahabad High Court in the case of *Zair Hussain* v. *Khurshed Jan*,[44] that a suit of this nature may be arbitrarily valued by the plaintiff for the purpose of jurisdiction. But, at the same time, it is not possible to estimate at a money-value the subject-matter of such suits, and the proper Court-fee is Rs. 10 within Art. 17 (vi) of Sch. II.[45] A suit for restitution of conjugal rights is incapable of valuation.[46] An appeal in such cases, from a decree passed by the Court of a subordinate Judge, lies to the District Court and not to the High Court,[47] where the value of the original suit in which the decree was made did not exceed five thousand rupees. An appeal lies to the High Court, if the value exceeds five thousand rupees.[48] The general principles deducible for valuation for purposes of jurisdiction, where no special statutory method is provided, have been laid down by the Madras High Court in *Vasireddi* v. *Manupudi*.[49] According to the rules framed by the Lahore High Court under S. 9, Suits Valuation Act, the value of suits for restitution of conjugal rights for the purposes of Court-fees has been fixed at Rs. 200 while it has been fixed at Rs. 1,000 for the purposes of jurisdiction.

942. **MADRAS FORESTS ACT.**—An appeal lies to the District Court from rejection of a claim by a Forest Settlement Officer, on a Court-fee stamp of Rs. 10 only under Art. 17 (vi) of second schedule to the Court-Fees Act.[50]

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(41) *Basawa Singh* v. *Bhagwan Kaur*, 17 I.C. 270=216 P.L.R. 1912 =181 P.W.R. 1912.

(42) *Sundara Aiyar* v. *The Board*, 115 I.C. 157=52 Mad. 388=56 M. L.J. 113=1929 M.W.N. 308.

(43) *Aisha* v. *Faiyaz Husain*, 33 All. 767=11 I.C. 186=8 A.L.J. 889.

(44) 28 All. 545.

(45) 33 All. 767=11 I.C. 186=8 A.L.J. 889, *supra*.

(46) Also see *Golam Rahman* v. *Fatima Bibi*, 13 Cal. 232; and *Mowla Newar* v. *Sajeedunnissa*, 18 Cal. 378.

(47) *Jan Mahomed* v. *Mashar Bibi*, 34 Cal. 352=11 C.W.N. 458=5 C.L.J. 400.

(48) *Bengal N.-W.P.* and *Assam Civil Courts Act*, S. 21.

(49) 101 I.C. 379=50 Mad. 646=1927 Mad. 563=52 M.L.J. 381= 25 M.L.W. 440.

(50) *Kamaraja* v. *Secretary of State*, 8 Mad. 22.

943. MADRAS LAND ESTATE ACT.—Where a ryot contested the land-holder's right to sell his holding under S. 112 of the Estates Land Act on the ground of absence of proper notice, and suit having been dismissed, the ryot preferred the second appeal, was held to require a Court-fee of Rs. 15 only, under Art. 17 (vi) of second schedule as the case was one where it was not possible to estimate at a money-value the subject-matter of appeal.[1]

944. LETTERS OF ADMINISTRATION AND PROBATE.—The Court-fee payable on an appeal from an order of a District Judge refusing to grant letters of administration with a copy of the will annexed is Rs. 10 under Art. 17 (vi) of Sch. II of the Act, as it is impossible to estimate the subject-matter in dispute in appeal at a money-value.[2]

945. SUITS TO ENFORCE REGISTRATION.—A suit for registration of a document under S. 77 of the Registration Act is not, for the purposes of payment of Court-fees, a suit for a declaratory decree with consequential relief within S. 7, Cl. (iv) (*c*) of the Court-Fees Act, but is a suit in which it is not possible to estimate at a money-value the subject-matter in dispute, within Art. 17 (vi) of Sch. II of the Act. The Court-fee payable in such cases is a fixed fee of Rs. 10.[3] As regards valuation for jurisdiction, the question cannot be decided with reference to S. 8 of the Suits Valuation Act. Subramania Ayyar, J., was of opinion that the value of the interest affected by the document as ascertained and determinable by the Court itself should be the basis of Court's jurisdiction, and not a value fixed at plaintiff's option as held by the High Courts of Calcutta and Allahabad.[4] Miller, J., also ruled that valuation of such suits should be according to the value of the interest created by the document, as the other alternative of leaving the plaintiff to value his plaint, and to require the Courts to accept his valuation is less satisfactory.[5] A suit under S. 77 of the Registration Act has a limited scope, and this is reflected in the application of Sch. II, Art. 17 (vi), which provides a fixed fee of Rs. 10 (recently raised to Rs. 20) only, and not an *ad valorem* fee under S. 7 (iv) (*c*) upon the value of the property comprised in the document.[6] It was held by Garth, C. J., in *Jantoo* v. *Radha Canto Das*,[7] that the Court-fees payable on all appeals to the High Court arising out of suits

(1) *Vithilinga Aiyaswami* v. *District Board, Tanjore*, 1930 Mad. 43=57 M.L.J. 510=30 M.L.W. 289=1929 M.W.N. 773=52 Mad. 972=121 I.C. 601.

(2) *Miss Eva Mount Stephens* v. *H. G. Orme*, 22 I.C. 98=35 All. 448.

(3) *Ramu Aiyar* v. *Sankara Aiyar*, 31 Mad. 89=3 M.L.T. 73=17 M.L.J. 573 (F.B.); followed *Savari Muthu Pillai* v. *Alagiam Pillai*, 2 M.L.J. 88=25 Mad. 103; *cf. Pydal Nambiar* v. *Kannan Nambiar*, 12 M.L.J. 87 (assumed that a suit under S. 77 of Registration Act was for a declaratory decree).

(4) 31 Mad. 89 (F.B.), *supra*. *cf. Zair Husain* v. *Khurshed Jan*, 28 All. 545; *Jan Mahamed* v. *Mashar Bibi*, 34 Cal. 352.

(5) *Ibid.* 31 Mad. 89 (96) (F.B.), per *Miller, J.*

(6) *Dwijendra Narain* v. *Jogesh Chandra*, 79 I.C. 520=39 C.L.J. 40.

(7) 8 Cal. 515.

brought under S. 77, of the Registration Act, 1877, is a fee of ten rupees irrespective of the value of the suit. This was followed in *Savari Muthu Pillai* v. *Alagian Pillai*,[8] and in *Rama Aiyar* v. *Sankara Aiyar*.[9] The Punjab Chief Court has held in *Muhammad Zakaria* v. *Fatima Begam*,[10] that a suit brought under S. 77 of the Registration Act for a decree directing registration of a receipt for Rs. 100, said to have been paid as earnest money of the price of a house, agreed to be sold for Rs. 2,500, as regards Court-fees came under Art. 17, Cl. (vi) of Second Schedule to the Court-Fees Act, and that the suit did not fall within any of the rules made under S. 9 of the Suits Valuation Act, nor did S. 8 provide for it, as Court-fees were not payable *ad valorem*, and that the suit was an unclassed one, and its value must be taken to be only Rs. 100, the amount for which the receipt was given.[11]

946. OTHER CASES FALLING UNDER ART. 17 (vi).—(1) When an appeal is not preferred against a decree as a whole, but only against the MODE OF EXECUTION OF THE DECREE, the case falls under Art. 17 (vi) of Sch. II, to the Court-Fees Act, and a stamp of Rs. 10 is sufficient.[12]

(2) An order dismissing an appeal for deficiency in Court-fee, or a second appeal where a question of law as to the interpretation of Court-Fees Act arises, requires a Court-fee of Rs. 10 on memorandum of appeal, as the subject-matter in the appeal from such an order being the correctness of the lower Court's decision demanding additional Court-fees or refusing to grant time to comply with it, and the resultant REJECTION OF THE MEMORANDUM AS INSUFFICIENTLY STAMPED is incapable of being properly valued.[13]

(3) In a suit for sale on a mortgage, where the plaintiff appeals claiming FUTURE INTEREST up-to-date of realization the proper Court-fee payable on the MEMORANDUM OF APPEAL is ten rupees, as provided by Art. 17 (vi) of the Second Schedule to the Court-Fees Act.[14]

(4-*a*) An appeal against the order marshalling securities in a mortgage decree falls under this Article.[15]

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(8) 25 Mad. 103=12 M.L.J. 188.

(9) 31 Mad. 89 (F.B.), *supra*.

(10) 21 P.R. 1895.

(11) *Ibid*.

(12) *Radha Krishan* v. *Mehtab Mian*, 90 I.C. 629=1925 Lah. 496=7 L.L.J. 364.

(13) *Govinda* v. *Bansi Lal*, 98 I.C. 663=1927 Nag. 100; (second appeal relating to a condition in decree of lower appellate Court that it would not adjudicate on his rights as regards merits unless he pay full Court-fees, the matter is really for removal of a condition).

(14) *Bhawani Prasad* v. *Kutubunnissa*, 27 All. 559=2 A.L.J. 263=25 A.W.N. 84; followed in *Bhagwanti* v. *Atma Singh*, 1934 Lah. 32; *Damodar Pershad* v. *Hardev Pershad*, 52 All. 1029=1931 All. 351=131 I.C. 253; also see *Bhag Shah* v. *Labha Mal*, 1933 Lah. 941 (Court-fee *ad valorem* the sum up to date of appeal, not least a Court-fee of Rs. 10).

(15) *Ujagar* v. *Manatan Kuar*, 1883 A.W.N. 312.

(4-*b*) AN APPEAL AGAINST AN ORDER ALLOWING REDEMPTION OF A MORTGAGE under a conditional redemption decree with the alternative of foreclosure, in a case in which the plaintiff mortgagors have paid in the requisite sum, but the defendant-mortgagees contended that the payment was made too late, and should not have been received, requires a Court-fee of Rs. 10 only, as the relief sought by the appeal cannot be exactly valued, and the case is not one in which the appeal needs to be stamped on the amount of the principal mortgage-money.[16]

(5) Where the relief claimed in a suit is the CANCELLATION OF A MORTGAGE DECREE, which leaves the defendant with the right and the opportunity to obtain another similar decree on the same mortgage in a properly framed suit, the value of the subject-matter of the suit is not capable of ascertainment and the suit falls within Art. 17 (vi) of Sch. II to the Court-Fees Act.[17] But where the appellant wants to set aside a final decree in a mortgage suit on the ground that necessary persons are not parties to the preliminary decree, *ad valorem* Court-fee is required to be paid on the decretal amount.[18]

(6) In a PARTITION SUIT, between members of a Muhammadan family, where the plaintiff's share in the property were admitted by the defendants, but the DEFENDANTS were ORDERED TO PUT IN PROPERLY STAMPED APPLICATIONS on the valuation of the respective shares claimed by them, if they desired to have their shares separated off, and the defendants APPEALED OBJECTING TO THIS ORDER BY LOWER COURT, it was held that the memorandum of appeal was properly stamped with a Court-fee of Rs. 10 under Sch. II, Art. 17, Cl. (vi) of the Act.[19] Where in a partition suit, a decree was passed in accordance with an arbitrator's award, and A, one of the parties was directed by that decree to pay a sum of money to the other side in cash: and A filed a petition for revision of the decree, seeking the reliefs (*a*) that he was not liable to pay the sum of money and (*b*) that the award was invalid and accepted without considering and disposing of the objections to that award, it was held that *ad valorem* Court-fee was required on the first relief, but a Court-fee of Rs. 10 was sufficient as regards relief (*b*).[20]

(7) Where in a suit for possession, the plaintiff's claim was decreed but the Court prescribed a condition that his possession should continue only during the lifetime of his transferor, the PLAINTIFF APPEALING TO GET THIS CONDITION REMOVED, it was held that a Court-fee of Rs. 10 paid was correct.[21]

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(16) *Dadudo* v. *Somnath*, 10 I.C. 736=7 N.L.R. 41; citing *Onkar* v. *Lakmi Chand*, 3 I.C. 920=5 N.L.R. 130; and *Dhiraj Singh* v. *Raja Ram*, 8 I.C. 1125=6 N.L.R. 164.

(17) *Mahadeo Ganesh Sohim* v. *Sadashiv*, 78 I.C. 437=1925 Nag. 66 (1); *cf. Devidas* v. *Ramlal* 13 I.C. 864=7 N.L.R. 190; (cancellation of decree held practically to mean cancellation of mortgage).

(18) *Barakutunnissa Begam* v. *Bawarunnissa*, 50 I.C. 279.

(19) *Mashkurunnissa* v. *Hashmutullah*, 20 I.C. 177=274 P.L.R. 1913.

(20) *Lila Ram* v. *Mukand Rai*, 15 I.C. 57=1 P.L.R. 1913.

(21) *Rup Chand* v. *Fateh Chand*, 11 I.C. 977=8 A.L.J. 821.

(8) Where in a suit for redemption of mortgage, the plaintiffs were given a decree for possession, of certain shares, on payment of a proportion of the total mortgage-money, and on appeal the plaintiffs wanted a DECREE FOR LESS THAN WHAT THEY HAD BEEN GIVEN, AND ON PAYMENT OF A SMALLER AMOUNT, it was held that it was impossible to value the appeal, and a Court-fee of Rs. 10 was sufficient.[22]

(9) Where plaintiff obtaining a DECREE DECLARING that he was entitled to A CERTAIN SUM LYING IN DEPOSIT WITH A BANK, and directing the bank to pay the amount to him, the defendants appeal was held sufficiently stamped with a Court-fee of Rs. 10 under Art. 17 (vi) of the Act.[23]

(10) An APPEAL AGAINST AN ORDER SETTING ASIDE AN AWARD, was held to fall under Art. 17 (vi) of Sch. II, for both the original application under para. 17, Sch. II, Civil Procedure Code, and the appeal embodied a prayer that could not be valued in money, and, therefore, the Rs. 10 Court-fee put in by the appellant was sufficient.[24]

(11) The Court-fee payable on a memorandum of appeal PRESENTED TO THE HIGH COURT UNDER S. 108, CL. (3) OF THE BENGAL TENANCY ACT of 1885, is that prescribed by Art. 17 (vi) of Sch. II of the Court-Fees Act.[25]

(12) The Court-fee on a memorandum of APPEAL AGAINST AN ORDER OF THE CIVIL COURT ON A REFERENCE BY THE COLLECTOR UNDER S. 5, BENGAL ALLUVIAL LANDS ACT is the fixed fee of Rs. 20.[26]

(13) Where the prayer in an APPEAL was THAT certain unnecessary FINDINGS BE EXPUNGED from lower Court's judgment or declared to be *obiter dicta*, the appellant is not required to pay *ad valorem* Court-fee, but the relief claimed being not capable of estimation at a money value, a Court-fee stamp of Rs. 10 should be paid.[27]

947. **ARTICLES 17-A AND 17-B, MADRAS.**—These articles are separate and independent from Art. 17. Consequently, an application under S. 84 (2), Madras Religious Endowments Act for which the Court-fee is payable under Art. 17 of Sch. II is not liable to a higher fee under Art. 17-A, or 17-B, of Sch. II of the Act.[28]

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(22) *Ali Akbar* v. *Sultan-ul-mllk*, 69 I.C. 653=1923 Lah. 129.

(23) *Uttam Devi* v. *Dinanath*, 75 I.C. 774=1923 Lah. 359; followed *Kirpal Singh* v. *Sant Singh*, 13 I.C. 305=71 P.R. 1911=30 P.L.R. 1912 =205 P.W.R. 1911.

(24) *Ram Jawarya Mal* v. *Deviditta Mal*, 34 I.C. 192=117 P.R. 1916.

(25) *Petu Ghorai* v. *Ram Khelawan*, 18 Cal. 667.

(26) *Basant Kumar Biswar* v. *Prosanno Kumar Guha*, 1932 Cal. 47=35 C.W.N. 181=58 Cal. 710=133 I.C. 222.

(27) *Zafar Ali Shah* v. *Amir Shah*, 1933 Lah. 678 (2)=144 I.C. 620.

(28) *Damodaram* v. *Board of Commissioners*, 1930 Mad. 392=53 Mad. 266 (F.B.); and *Sundarra Ayyar* v. *Board of Commissioners*, 1929 Mad. 334=52 Mad. 388.

Under Madras Board's Proceedings No. 472-R, dated 23rd December, 1922, and No. 141, Mis., dated 26th April, 1926, a Cl. (*e*) was added to item 28, and purported "to *reduce* to Rs. 15 the fees chargeable under Sch. II, on a memorandum of second appeal in a suit of the class mentioned in Art. 17-B, and instituted in a Revenue Court." Otherwise the legal fee would be Rs. 100. A prayer for declaration that mortgage is not binding on plaintiff comes under Art. 17-A (1).[29]

Number.		Proper Fee.
18. Application under section 326 of the Code of Civil Procedure.		Ten rupees. [Fifteen rupees in Bihar and Orissa and in Madras and U. P.] [See Bombay and Madras Amendments.]

948. AMENDMENTS.—The reference to S. 326 of Act VIII of 1859, should read Second Schedule, R. 17 (or, R. 20 in Madras) of the Code of Civil Procedure, 1908.

This Article has been amended in Bihar and Orissa, by Act II of 1922; in Bombay, by Act II of 1932; in Madras, by Act V of 1922; and, in United Provinces, by Act III of 1932, under which the fee is enhanced as follows:—

Number.		Proper Fee.
A. BEHAR AND ORISSA.		Fifteen rupees.
B. BOMBAY:		
18. Application—		
(*a*) under paragraph 17 of the second schedule to the Code of Civil Procedure, 1908.		Ten rupees.
(*b*) For probate or letters of administration or for revocation thereof under the Indian Succession Act.	When the amount or value of the estate does not exceed two thousand rupees.	Two rupees.
	When it exceeds two thousand rupees, but does not exceed five thousand rupees.	Five rupees.
(*c*) for a certificate under Part X of the Indian Succession Act, 1925, or Bombay Regulation VIII of 1827.	When it exceeds five thousand rupees.	Ten rupees.

(29) *Secretary of State* v. *Lakhanna*, 141 I.C. 80=1933 Mad. 430.

Number.		Proper Fee.
(*d*) for opinion or advice or for discharge from a trust or for appointment of new trustees under S. 34, 72, 73, or 74 of the Indian Trusts Act, 1882.		Ten rupees.
(*e*) for the winding up of a company under S. 166 of the Indian Companies Act, 1903.		Ten rupees.
(*f*) under R. 58 of Order 21 of the Code of Civil Procedure, 1908, regarding a claim to attached property.	When the amount or value of the property exceeds five hundred rupees.	Ten rupees.
C. MADRAS.	In Madras, Applications under S. 17 or S. 20 of the second schedule of the Code of Civil Procedure, 1908, when presented to a District Munsifs Court or the City Civil Court.	Fifteen rupees.
D. UNITED PROVINCES.		Fifteen rupees.

Number.		Proper Fee.
[19. Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908.]		Ten rupees. [Fifteen rupees in Bihar and Orissa and in United Provinces.] [Twenty in Bombay.]

949. LOCAL AMENDMENTS.—In Bihar and Orissa, by Act II of 1922; in Bombay, by Act II of 1932 and in United Provinces, by Act III of 1932, the fee has been enhanced.

In Madras, by Act V of 1922, the fee is enhanced according to the forum in which the suit is brought, *i.e.*, "when presented to a District Court, or sub-Court "one hundred rupees."

950. SCOPE.—This clause provides Court-fee, on an agreement in writing, stating a question for the opinion of Court under the provisions of S. 90, and O. 36 of Civil Procedure Code.

Number.		Proper Fee.
20. Every petition under the Indian Divorce Act, except petitions under S. 44 of the same Act, and every memorandum of of appeal ["or of cross objections" in Bihar and Orissa] under S. 55 of the same Act.		Twenty rupees. [Thirty rupees in in Bombay, Bihar and Orissa and in United Provinces.]

951. LOCAL AMENDMENTS.—The fee is enhanced in Bihar and Orissa, by Act II of 1922; in Bombay, by Act II of 1932; and in United Provinces, by Act III of 1932.

The words "or of cross-objections" shall be inserted after the words "memorandum of appeal" in this article.

952. SCOPE.—A Court-fee of Rs. 20, is sufficient in a suit for divorce, whatever damages are claimed.[30]

Number.		Proper Fee.
21. Plaint or memorandum of appeal [or cross objections] under the Parsi Marriage and Divorce Act, 1865.		Twenty rupees. [Thirty rupees in Bihar and Orissa and in Bombay.]

953. LOCAL AMENDMENTS.—The fee is enhanced in Bihar and Orissa, by Act II of 1922; and in Bombay, by Act II of 1932.

The word 'appeal' shall include "cross-objections."

Number.		Proper Fee.
22. Plaint or memorandum of appeal in a suit by a reversioner under the Punjab Customary Law for a declaration in respect of an alienation of ancestral land.		Twenty rupees.

(30) *Barkat* v. *Hakam Bibi*, 1931 Lah. 1 (S.B.)=130 I.C. 402.

This is an article enacted by the Punjab Court-Fees Amendment Act (VII of 1922, S. 12) and applies only to the Punjab.

Where a mortgage with possession was effected, followed by a second deed of mortgage on the same conditions, to the same mortgagee, by which only the amount secured on the mortgage was increased, there was only one alienation, and a stamp of Rs. 20, was held sufficient for a suit by reversioners under the Punjab customary law for a declaration in respect of the alienation.[31]

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(31) *Suba Singh* v. *Bela Singh*, 1933 Lah. 382 (citing *Remal Das* v. *Mt. Jannat*, 1921 Lah. 136=62 I.C. 789=2 Lah. 202); also see *Sher Singh* v. *Daya Ram*, 1932 Lah. 465=139 I.C. 49=13 Lah. 660 (F.B.); compare *Warira Begam* v. *Shoshi Bhusan*, 1920 Pat. 105=57 I.C. 685; (mortgagee suing or two bonds, with separate causes of action).

SCHEDULE III.

(*See Section* 19—*I*).

FORM OF VALUATION (TO BE USED WITH SUCH MODIFICATIONS IF ANY, AS MAY BE NECESSARY).

IN THE COURT OF .

Re. *Probate of the Will of* (*or administration of the property and credits of* ,) *deceased.*

I { solemnly affirm / make oath, }

and say that I am executor (or one of the executors or one of the next of kin) of deceased and that I have truly set forth in Annexure A to this affidavit all the property and credits of which the abovenamed deceased died possessed or was entitled to at the time of his death, and which have come, or are likely to come, to my hands.

2. I further say that I have also truly set forth in Annexure B all the items I am by law allowed to deduct.

3. I further say that the said assets, exclusive only of such last-mentioned items, but inclusive of all rents, interests dividends and increased values since the date of the death of the said deceased are under the value of .

ANNEXURE A.

VALUATION OF THE MOVEABLE AND IMMOVEABLE PROPERTY OF DECEASED.

	Rs.	A.	P.
Cash in the house and at the Banks, household goods, wearing-apparel, books, plate, jewels, etc. .. (*State estimated value according to best of Executor's or Administrator's belief.*)			
Property in Government securities transferable at the Public Debt Office .. (*State description and value at the price of the day; also the interest separately, calculating it to the time of making the application.*)			
Immoveable property consisting of .. (*State description, giving, in the case of houses, the assessed value, if any, and the number of years' assessment, the market-value is estimated at, and, in the case of land, the area, the market-value and all rents that have accrued.*)			

	Rs.	A.	P.
Leasehold property ..			
(*If the deceased held any leases for years determinable, state the number of years' purchase, the profit rents are estimated to be worth and the value of such, inserting separately arrears due at the date of death and all rents received or due since that date to the time of making the application.*)			
Property in public companies ..			
(*State the particulars and the value calculated at the price of the day; also the interest separately calculating it to the time of making the application.*)			
Policy of insurance upon life, money out on mortgage and other securities, such as bonds, mortgages, bills, notes and other securities for money ..			
(*State the amount of the whole; also the interest separately, calculating it to the time of making the application.*)			
Book debts ..			
(*Other than bad.*)			
Stock in trade ..			
(*State the estimated value, if any.*)			
Other property not comprised under the foregoing heads ..			
(*State the estimated value if any.*)			
TOTAL ..			
Deduct amount shown in Annexure B not subject to duty ..			
NET TOTAL ..			

ANNEXURE B.

SCHEDULE OF DEBTS, ETC.

Amount of debts due and owing from the deceased, payable by law out of the estate ..			
Amount of funeral expenses ..			
Amount of mortgage incumbrances ..			
Property held in trust not beneficially or with general power confer a beneficial interest ..			
Other property not subject to duty ..			
TOTAL ..			

THE SUITS VALUATION ACT, 1887.

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Title _____

Author _____

Accession No. _____

Call No. _____

Borrower's No.	Issue Date	Borrower's No.	Issue Date

THE SUITS VALUATION ACT, 1887

(AS AMENDED)

An Act to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto.

WHEREAS it is expedient to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto; it is hereby enacted as follows:—

Title.

1. This Act may be called THE SUITS VALUATION ACT, 1887.

COMMENTS.

1. **EXTENT.**—This Act has been declared in force in British Baluchistan, by the British Baluchistan Laws Regulation, 1890 (I of 1890). It had been extended, by Notification, to Upper Burma, in 1888, and it has been declared in force, in Upper Burma (except the Shan States), by the Burma Laws Act, 1898 (XIII of 1898), S. 4, and the First Schedule.

2. **SCOPE.**—"Part I of the Suits Valuation Act empowers the Local Government to make rules for determination of the value of land for purposes of jurisdiction in certain classes of suits, and Part II declares that in suits not coming within paragraphs (*v*), (*vi*) and (*ix*) and paragraph (*x*), cl. (*d*) of S. 7 of the Court-Fees Act, the value as determinable for the computation of Court-fees and the value for the purposes of jurisdiction shall be the same."[1] Part III enacts the supplemental provisions regarding procedure if there is any objection, on appeal, as to overvaluation or under-valuation of a suit or appeal for jurisdictional purposes in a Court of first instance or lower appellate Court.

3. **POWERS OF COURT TO INVESTIGATE VALUE OF SUIT FOR JURISDICTIONAL PURPOSES.**—Ordinarily, the appellate Court does not interfere with a valuation made by a trial Court for the purpose of determination of jurisdiction, but it is always open to a party to take this as a ground of appeal. The Court may also investigate the matter in exercise of its inherent powers.[2] Thus, an appeal on the ground of defect of jurisdiction

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(1) *Ladli Begam* v. *Ramdas*, per *Mullick, J.*, 90 I.C. 321=6 P.L.T. 448=1926 Pat. 488.

(2) *Ibid.* 90 I.C. 321 (322), *supra.*

may, if successful, disturb the finality of the valuation for the purpose of computation of Court-fees in suits coming under S. 8 of the Suits Valuation Act.[3]

An erroneous payment of Court-fee cannot affect jurisdiction; and, an appeal cannot be taken to a higher Court, by paying Court-fee on a larger amount than need have been paid under the provisions of the Court-Fees Act.[4] The Suits Valuation Act and the Court-Fees Act are purely fiscal enactments, and they have no bearing on the question as to which is the proper Court for the institution of the suit having regard to the value of the property.[5] It was held by their Lordships of the Privy Council, in *Rachappa* v. *Shidappa*,[6] that "when a notional value, different from the real value, is placed upon property for the purpose of the Court-fee, such notional value cannot displace the real value for the purpose of jurisdiction." It has been laid down by the Allahabad High Court, is *Inayat Hussain* v. *Bashir Ahmad*,[7] that "(1) where the valuation of the suit for the purpose of jurisdiction is CONTESTED, the value must be determined by the Court; and (2) where the valuation can be ascertained correctly, the plaintiff cannot be allowed to put an ARBITRARY VALUE upon his claim, nor can he be allowed to overvalue, or undervalue his claim with a view to choose his forum." Similarly, it has been held by the PATNA High Court that a party is not entitled where the valuation of a suit can be correctly ascertained to put a purely fancy value on the suit for purposes of jurisdiction.[8] To these propositions of law may be added the rule laid down by Chamier, C.J., in the Patna High Court case of *Badari Singh* v. *Lobhi Singh*[9]: "Under the Suits Valuation Act a suit cannot be dismissed on the ground that it was OVERVALUED, and brought in the wrong Court, but it must be disposed of as if the suit had been properly valued and brought in the proper Court."

4. VALUE OF THE SUBJECT-MATTER OF A SUIT OR APPEAL.—The valuation of the subject-matter of a suit for the purpose of determining the jurisdiction of the Court, and for the purpose of stamp duty is not necessarily the same. The value for purposes of assessing the Court-fee payable on the plaint or petition of appeal, is, for the sake of convenience, fixed by certain rules which determine an artificial value for purposes of the stamp-revenue. The value of the subject-matter of a suit or appeal,

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(3) *Ibid.* 90 I.C. 321 (322), *supra.*

(4) *Jallaldeen Markkayar* v. *Vijayaswami,* (1916) 39 Mad. 447=28 I.C. 624; cited in *Gopal Menon* v. *Raman Menon,* 1932 Mad. 217=35 M.L.W. 64=1932 M.W.N. 53=138 I.C. 136.

(5) *Inayat Husain* v. *Bashir Alwad,* 1932 All. 413=1932 A.L.J. 416=141 I.C. 141; see also *Jagdish Saran* v. *Jaidai Kunwar,* 1933 All. 903=144 I.C. 942.

(6) 1918 P.C. 188=50 I.C. 280=46 I.A. 24=43 Bom. 507 (P.C.).

(7) *See* Foot-note (5), above.

(8) Also see *Dhaturi Singh* v. *Kedar Nath,* 6 Pat. 597=101 I.C. 506=1927 Pat. 224.

(9) 39 I.C. 551=1 P.L.W. 418; also see to same effect 3 A.L.J. 511=26 A.W.N. 195.

on which depends the jurisdiction of the several grades of Civil Courts, is the actual value of the property in litigation.[10] The valuation of suits for the purpose of jurisdiction is perfectly distinct from their valuation for the fiscal purpose of Court-fees. Therefore, Court-Fees Acts, which are fiscal enactments, are not to be resorted to for construing enactments which fix the valuation of suits for the purpose of determining jurisdiction.[11] As observed by their Lordships of the Privy Council, in *Lekhraj* v. *Kanhya Singh*[12] the stamp duties imposed for fiscal purposes are calculated on a certain rule, fixed by law, but the right of appeal (to Privy Council) depends on the value, which is a matter of fact. Thus a distinction has been taken in the Courts of India and in the Privy Council between the valuation of a suit for purposes of Court-fees and the valuation of the suit for purposes of jurisdiction.[13] The law may lay down, for purposes of revenue, certain rules for the valuation of suits; but such valuation cannot be accepted as a criterion of the actual amount or value of the claim, upon which the jurisdiction of a Court depends.[14] Thus, the rules laid down in the Court-Fees Act are not to be taken as necessarily a guide in determining the value of the subject-matter of a suit for purposes of jurisdiction[15]: although, under S. 8 of the Suits Valuation Act, when in suits other than of the excepted classes, *ad valorem* Court-fees are payable, the value as determinable for the computation of Court-fees and the value for purposes of jurisdiction shall be the same.[16] The general rule in appeal is that when the appeal is against the whole decree, and if the suit has been decreed in full, the value of the appeal is the same as the value of the original plaint.[17] According to Allahabad High Court, the decree in a suit determines the forum of appeal, and not the plaint.[18] But, the later view is that the value must be taken to mean the value assigned by the plaintiff in his plaint, and not the value as found by the Court, unless it appears to be misrepresented through gross negligence or purposely.[19]

5. SCHEME OF VALUATION OF SUITS FOR PURPOSES OF JURISDICTION.—The value for purposes of jurisdiction is determined by the Suits Valuation Act, 1887. This

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(10) *Aukhil Chunder Sen* v. *Mohini Mohun Dass*, (1879) 5 Cal. 489=4 C.L.R. 491; also see *Kalu Bin Bhiwaji* v. *Visram Mawaji*, 1 Bom. 543; *Nauhoon Singh* v. *Toofanee Singh*, 20 W.R.C.R. 33=12 Bom.L.R. 113.

(11) *Dayachand Nenchand* v. *Hemchand Dharamchand*, 4 Bom. 515 (F. B.) per *Westropp, C.J.*; *also see* 6 M.H.C.R. 151 (F.B.).

(12) 1 I.A. 317 (320) P.C.; also see *Mohun Lall Sookul* v. *Bebee Doss*, 7 M.I.A. 428 (Leave to appeal granted, where actual value of the property sued for above Rs. 10,000 although Court-fee assessed on *Jama* or rent basis).

(13) *Manohar Ganesh* v. *Ramcharandas*, 2 Bom. 219 (229); citing 12 Bom.L.R. (115), note; 12 Bom.L.R. 113; 7 Bom.L.R. 663; 18 W.R.C.R. 21 (22).

(14) *Bai Mahkor* v. *Bulakhi Chakhi Chaku*, 1 Bom. 538.

(15) *Rupchand Khemchand* v. *Balvant Narayan*, 11 Bom. 591.

(16) *Dayaram Jagjivan* v. *Gordhandas Dayaram*, 31 Bom. 73=8 Bom.L.R. 885.

(17) 1933 Rang. 410 (1).

(18) 80 I.C. 183=1922 All. 47.

(19) 86 I.C. 1055=47 All. 534=1925 All. 376=23 A.L.J. 216.

Act consists of two parts. Sections 3 and 4, in Part I, and Ss. 8 and 9, in Part II, make the necessary provisions for regulation of valuation. In suits falling under S. 7 (*v*), (*vi*), and (*x*) (*d*), of the Court-Fees Act, the Local Governments may make rules, under S. 3 of the Suits Valuation Act, for determining the jurisdictional value of suits. Section 4 relates to valuation of suits coming under S. 7 (*iv*) of the Court-Fees Act. Under S. 8, of the Suits Valuation Act, the value of a suit for computation of Court-fees, and the value for purposes of jurisdiction shall be the same in suits other than those referred to in S. 7, cls. (*v*), (*vi*), (*ix*) and (*x*) (*d*) of the Court-Fees Act.[20] Generally, the amount of the claim, or the actual value of the property claimed determines jurisdiction[21]; but, in cases covered by S. 8 of the Suits Valuation Act, the Court-fees must be first fixed, and the same valuation has, afterwards, to be adopted for jurisdiction.[22] By S. 9 of the Suits Valuation Act, High Courts are empowered to frame rules in cases not covered by S. 7, cls. (*v*), (*vi*) and (*x*) (*d*), of the Court-Fees Act, when the subject-matter of suits is not capable of satisfactory valuation. Suits under S. 7 (*iv*), or Sch. II, Art. 17, of the Court-Fees Act, relating to land, or to an interest in land shall adopt a valuation not exceeding that determined under the rules framed under S. 3 of the Suits Valuation Act, regarding which power has already been given to the Local Government in consultation with the High Court.[23-24]. Subject to the maximum value which should be calculated having regard to Ss. 3 and 4, the market-value should determine the jurisdiction in a suit for determination of title, and it is not open to the plaintiff to value his relief as he likes.[25]

6. **ARBITRARY VALUATION BY PLAINTIFF.**—In suits for account and administration, falling under S. 7 (*iv*) (*f*) of the Court-Fees Act, the plaintiff must state the amount at which he values the relief sought for purposes of Court-fees, and this value also determines the value for purposes of jurisdiction.[26] Similarly, it is open to the appellants in an appeal against preliminary decree in a suit for partnership accounts to fix their own value provisionally for the purposes of Court-fee and jurisdiction[27] but

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(20) *Ibid.* 31 Bom. 73 (77), *supra*.

(21) (1866) 3 M.H.C.R. 170.

(22) *Silendra Nath Mitra* v. *Ram Charan Pal*, 66 I.C. 268=1921 Cal. 84 (85); also see *Rachappa* v. *Shidappa*, 50 I.C. 280=46 I.A. 24=43 Bom. 507 (P.C.).

(23-24) *Aklemannessa Bibi* v. *Mahomed Hatem*, 31 Cal. 849; also see 28 All. 545.

(25) *Jagdish Saran* v. *Jaidai Kunwar*, 1933 All. 903=144 I.C. 942.

(26) *Muhammad Abdul Majid* v. *Ala Bux*, 86 I.C. 1055=47 All. 534 =1925 All. 376; *Bai Hiragavri* v. *Gulabdas Jamnadas*, 22 I.C. 71 (72); compare, *Khatija* v. *Adam Husenally*, 29 I.C. 949 (950)=39 Bom. 545; *Dhani Ram Shaha* v. *Bhagirath Shaha*, 22 Cal. 692 (708); *Suraiya Qadir* v. *Qudsia Begam*, 24 I.C. 643 (660); *Shiyauddin* v. *Aishabi*, 26 I.C. 342 (343)=100 P.R. 1914; *Rikhi Kesh* v. *Mela Ram*, 94 I.C. 650=1926 Lah. 242.

(27) *Brijraj* v. *Kisanlal*, 1933 Nag. 127=141 I.C. 277; and In re *Venkatanandam*, 1933 Mad. 330.

according to another view the defendant is bound by the plaintiff's valuation of a suit for rendition of accounts.[28] Likewise, in suits for declaration with consequential relief, or injunction suits, falling within S. 7 (*iv*) (*c*) of the Court-Fees Act, the Court is bound by the plaintiff's valuation in the plaint for purposes of Court-fees, which is also to be taken as the value of suit for purposes of jurisdiction by virtue of S. 8 of the Suits Valuation Act.[29] Where the suit is to enforce a right to share in a joint family property, falling under S. 7 (*iv*) (*b*) of the Court-Fees Act, the plaintiff can value it as he pleases for purposes of Court-fees and the value for jurisdiction is also the same.[30] A suit for recovery of money due on a mortgage is valued for purposes of Court-fee and jurisdiction on the amount claimed.[31] The provisions of S. 8 of the Suits Valuation Act apply to appellate Courts as to Courts of first instance.[32] Where values are to be identical, plaintiff cannot put a higher value for jurisdiction.[33]

7. VALUATIONS PRESCRIBED BY STATUTE.— As regards pre-emption suits, in respect of revenue-paying lands, the value of the suit is reckoned at 30 times the jama, under the rules framed by the Punjab Local Government under S. 3, Suits Valuation Act[34]; and, where the property is a house, the market-value thereof, as given by the plaintiff, is the value for purposes of jurisdiction.[35] In Bengal, the value of the subject-matter of pre-emption determines the jurisdiction, under the Bengal Civil Courts Act (VI of 1871).[36] In Madras, under S. 14 of the Madras Civil Courts Act, 1873, the value is that fixed under S. 7 (*v*) of the Court-Fees Act, for a suit for possession of the land sought to be pre-empted.[37] It has been held by the Oudh Judicial Commissioner's Court, that in a pre-emption suit, the valuation set by the plaintiff in the plaint, decides the jurisdiction, and not the price set out in the sale deed in question.[38] In suits for redemption and foreclosure, which are expressly excepted from the operation of S. 8,

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(28) *Batna Ram* v. *Rahmatullah,* 1931 Lah. 143=131 I.C. 337 (1).

(29) *Manney Lal* v. *Thakur Radhey Gopalji,* 87 I.C. 190=47 All. 501 =1925 All. 602; *Balkrishna* v. *Jankibai,* 56 I.C. 340 (341)=44 Bom. 331; *also* see 52 I.C. 897=43 Bom. 376=1918 P.C. 135 (136) (P.C.); *Hari Shanker* v. *Kali Kumar,* 32 Cal. 734 (738); compare *Rajbala Dasi* v. *Radhika Charan,* 79 I.C. 982=1924 Cal. 969; 26 P.R. 1887; 163 P.R. 1888; *Jhanda Singh* v. *Gulabmal Bhagwandas,* 13 Lah. 788=137 I.C. 240=1933 Lah. 246; *Ghulam Haider* v. *Bishambardas,* 140 I.C. 73=33 P.L.R. 458; *Arunachalam* v. *Rangasamy,* 28 I.C. 79 (81)=38 Mad. 922 (F.B.); also see and cf. *Maung Noe* v. *Maung Kha Pu,* 1933 Rang. 40=142 I.C. 705: (arbitrary value not allowed).

(30) *Chelasami Ramiah* v. *Ramasami,* 18 I.C. 363.

(31) 2 All. 698 (704); 18 Bom. 696 (698).

(32) 18 Bom. 207.

(33) 79 I.C. 358=46 All. 419=1924 All. 597; and 87 C. 650=1925 All. 602=47 All. 501=23 A.L.J. 344 and 70 I.C. 852=1922 Sindh 20. Also see 36 All. 500=12 A.L.J. 844=24 I.C. 679; and 44 Bom. 331=51 I.C. 340.

(34) 16 P.R. 1908; and 46 P.R. 1908.

(35) 101 P.R. 1900; 24 All. 218 (225, 226).

(36) 3 Bom.L.R. (App.) 143=14 W.R. 230 (Note); also 13 Cal. 255.

(37) 41 Mad. 721=45 I.C. 89.

(38) 9 I.C. 414; 10 All. 524; 13 All. 320 and 16 All. 286.

Suits Valuation Act, the value for jurisdiction is determined by the principal amount of mortgage, according to the High Courts of Allahabad and Madras[39]; but according to other High Courts, it is the amount due on the mortgage which determines jurisdiction in such cases.[40]

8. **ACTUAL OR MARKET VALUE.**—In suits for partition and separate possession of the plaintiff's share, where the plaintiff is out of possession of his share, the value for jurisdiction is the value of plaintiff's share claimed[41]; and, where the plaintiff, while in joint possession of the suit properties, claims a partition of his share, the value of the entire property, and not merely the share of the plaintiff, will be the jurisdictional value of the suit.[42] The value of a suit to establish the validity of charge upon a property is the amount of the charge, or the value of the property whichever is less.[43] The value of a claim suit that the property attached is not liable to sale in execution, is the amount of the decree where the value of the property is greater.[44] The value of a suit for establishing occupancy rights and for possession thereof is that of the interest claimed, and not that of the entire interest in land.[45] A suit by one shareholder to set aside a sale of the property held by several shareholders is to be valued according to the value of the entire property, although the plaintiff asks for possession of his share alone.[46] In a suit by daughter for declaration that alienation by widow is invalid, the jurisdiction of Court to try the suit depends on the market-value of the properties alienated and not on the value of the interest claimed by the plaintiff in the properties.[47]

9. **PLAINTIFF'S VALUATION.**—In cases where satisfactory valuation is not possible, in the absence of any rules framed by the High Courts, the plaintiff's valuation should be accepted as determining jurisdiction, according to the majority of the High Courts.[48] In the absence of rules under Ss. 3 and 4 of the Suits

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(39) 5 All. 332; 8 All. 438 (442, 443); 31 All. 44=1 I.C. 703; *also see* 1 All. 620; 2 All. 778 (780); 3 All. 822 (824); and 5 Mad. 284, 287 (Note), 289; and 39 Mad. 447=28 I.C. 624 (625).

(40) 11 Bom. 591 (594); 14 Bom. 19 (23); also see 51 Cal. 737=78 I.C. 747=1924 Cal. 783 (785); 7 Lah. 570=96 I.C. 890=1926 Lah. 376 (378); and 21 I.C. 918 (919)=9 N.L.R. 161 *cf.* 8 I.C. 464=(1910) 1 U.B.R. 10: (market-value of land at time of suit taken to be value of suit).

(41) 25 All. 277 (279); 24 All. 381 (382); 12 All. 506 (509); also 33 Bom. 658=4 I.C. 243; 22 Bom. 315 (316); and 17 Cal. 680 (683); 8 Cal. 126 (128). *Cf.* 13 C. L. R. 253; 8 Mad. 235 (236); 11 Mad. 140 (141); 13 Mad. 25 (27); 14 Mad. 183 (184); 15 Mad. 69 (70); 19 Mad. 56 (59); 20 Mad. 289 (292); 21 Mad. 234 (236); 110 P.R. 1888 (F.B.); and 29 I.C. 766 (767) (Punjab).

(42) 3 C.L.J. 197 (198)=10 C.W.N. 565, foot-note; 4 C.L.J. 509; 3 C.L.J. 257 (258)=10 C.W.N. 564; 52 Cal. 128=85 I.C. 870=1925 Cal. 320.

(43) 4 Mad. 339 (341).

(44) 1933 All. 249 (F.B.).

(45) 23 I.C. 964 (965).

(46) 21 W.R. 68 (70)=12 B.L.R. 370.

(47) *Dhanabhagiammal* v. *Mari Ammal*, 139 I.C. 471=1932 Mad. 671.

(48) 15 All. 378 (379) (Adoption case); 28 All. 545 (551)=1906 A. W.N. 99 (F.B.) (Restitution of conjugal rights); (1895) B.P.J. 228;

Valuation Act, 1887, the valuation of a suit is the money value of the loss which the plaintiff apprehends would result to him.[49] The MADRAS High Court holds, however, that where no special method of valuation has been provided by statute, the plaintiff must put a more or less arbitrary value, at his option, where the subject-matter of the suit is wholly unrelated to anything which can be readily stated in definite money terms[50]; but, if a real money-value can be assigned to the relief asked for, the market-value of the property affected will determine the jurisdictional value of the suit[1]; and this market-value will be of the whole of the property affected, and not merely the plaintiff's share.[2] These principles, applied to suits for restitution of conjugal rights, would give the valuation at plaintiff's option, according to all High Courts.[3] But, in suits for declaration of the validity of an adoption, or to set aside an adoption, the High Courts of ALLAHABAD, BOMBAY and CALCUTTA will determine the jurisdiction of Courts according to plaintiff's valuation[4]; and the MADRAS High Court will consider whether the relief claimed affects properties which the person adopted will be entitled to, and, therefore, determine jurisdiction according to the market-value of the properties.[5] Similarly, according to MADRAS High Court, the value of the trust property will be taken to be jurisdictional valuation in suits for removal of a trustee, or the Karnavan of a Malabar Tarwad[6]; and, likewise, the value for jurisdictional purposes, in suits to set aside a document, or to compel the registration of a document will be determined by the value of the interest affected by the document.[7]

10. GENERAL PRINCIPLES FOR THE DETERMINATION OF VALUATION OF SUITS.—For the purpose of determining the valuation of a suit, the allegations in the plaint are to be assumed true.[8] The value for purposes of jurisdiction is

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(1911) 35 Bom. 264=10 I.C. 816 (Adoption case); 34 Cal. 352 (356); 37 Cal. 800=6 I.C. 636; *Cf.* 13 Cal. 232; 31 Cal. 849 (Restitution of conjugal rights); also see 14 Cal. 351 (352); and compare 18 Cal. 378 (381) (Appeal to Privy Council).

(49) Also see 73 I.C. 43=1923 Pat. 137=2 Pat. 198=4 P.L.T. 71 (*Ram Sekhar* v. *Sheonandan Dubey*).

(50) 50 Mad. 646=101 I.C. 379 (381, 382)=1927 Mad. 563 (565); also see 24 I.C. 316=1 L.W. 398 (Suit for declaration).

(1) 50 Mad. 646=101 I.C. 379 (381, 382)=1927 Mad. 563 (565); 56 I.C. 762=1921 Pat. 105; 75 I.C. 115=1924 Mad. 84; and 79 I.C. 343=1924 Mad. 621.

(2) 50 Mad. 646, *supra*; 6 Mad. 192; 15 Mad. 501.

(3) 28 All. 545 (551); 13 Cal. 232 (236); 34 Cal. 352 (356); 4 I.C. 836=34 Bom. 236.

(4) *Ibid.*

(5) 50 Mad. 646=101 I.C. 379=1927 Mad. 563, *supra*; also 75 I.C. 115=1924 Mad. 84 (85).

(6) 8 I.C. 545=20 M.L.J. 726; 8 Mad. 516 (518); 11 Mad. 266; 14 Mad. 78 (79). But, see Notification, dated 26—2—1903 and dated 3—3—1913, Part II, p. 368 (Madras).

(7) 13 Mad. 56; 31 Mad. 89 (93); 15 Mad. 294 (295); 23 Mad. 490; 27 Mad. 480: and 75 I.C. 115=1924 Mad. 84 (85).

(8) 10 All. 524; 25 W.R. 76; 24 Cal. 661 (666); 16 I.C. 773; 35 I.C. 797 (798); 123 I.C. 417 (418)=1930 Nag. 73.

ordinarily determined, with reference to the claim made, and not to the decision upon that claim.[9] The general proposition is that the value of a suit both for purposes of Court-fee and jurisdiction is based upon the case brought by the plaintiff irrespective of the pleas raised by defendant[10]; and whether the allegations in the plaint have or have not been denied is immaterial.[11] For instance, in a suit for partition and separate possession, by a person claiming to be in joint possession of the property, the mere denial by the defendant that plaintiff was in joint possession is ignored;[12] and, in a suit for redemption, where plaintiff does not admit any binding mortgage, the fact that defendant sets up several documents does not affect the value of suit as brought.[13] Jurisdiction does not depend on the result of a suit or on the defence set up but on the nature of the claim as brought; that is to say, what decides the venue in a case is the nature of the claim as brought.[14] What *prima facie* determines the jurisdiction of a Court is the claim or subject-matter of the claim as estimated by the plaintiff, and the determination having given the jurisdiction, the jurisdiction itself continues, whatever the event of the suit, and this is so notwithstanding a *bona fide* error in the estimate made by the plaintiff. But the plaintiff cannot oust the Court of its jurisdiction by making unwarrantable additions to the claim which cannot be sustained and which there is no reasonable ground for expecting to sustain.[15] A Court assumes jurisdiction on the basis of a statement made in the plaint upon which it is bound to rely, if the statement has not been challenged or corrected in any way. "It is open to the defendant when he appears to answer the suit to raise the plea that the suit has not been properly valued, and to show, if he can, that the Court in which the suit has been brought has no jurisdiction to try it." But if no such plea is taken by a defendant, that the value of the suit is exaggerated, or is under-estimated, when he has had the opportunity of raising it, the Court cannot be said to have acted without jurisdiction.[16] Where the defendant had acquiesced in plaintiff's valuation, and appealed to the District Judge on the basis of the valuation in trial Court, he could not be allowed to turn round and say that the value was above Rs. 10,000.[17] According to one set of rulings the

(9) 101 P.R. 1900; 1925 Nag. 183=82 I.C. 201; also see 1929 Pat. 626.

(10) 199 P.L.R. 1908; 5 Pat. 631; 35 I.C. 797 (798); 96 I.C. 129=1926 Mad. 678 and 1932 Mad. 409; also see 82 I.C. 201=1925 Nag. 183 (Plaintiff's claim, and not the defence determines value).

(11) 96 I.C. 129=1926 Mad. 678.

(12) 16 I.C. 773; 1932 Cal. 353.

(13) 9 Mad. 208 (212).

(14) *Seth Harbax* v. *Lachman*, 82 I.C. 201=1925 Nag. 183.

(15) *Lakshman Bhatkar* v. *Babaji Bhatkar*, 8 Bom. 31; also see *Saroda Sundari* v. *Akramannessa*, 1924 Cal. 783=51 Cal. 737=78 I.C. 747=28 C.W.N. 676 (Jurisdiction continues unless a different principle comes into operation to prevent such a result as to make the proceedings from the first abortive).

(16) *Khudajiatul Kubra* v. *Amina Khatun*, 80 I.C. 413=46 All. 250=1924 All. 388=22 A.L.J. 122.

(17) *Rameshwar Khemka* v. *Siddeshwar Ghosh*, 101 I.C. 901=1927 Cal. 418=45 C.L.J. 225.

plaintiff's valuation of the subject-matter of the suit controls the pecuniary jurisdiction of the appellate Court as well,[18] unless the true value has been altogether misrepresented by the plaintiff;[19] but, in some cases, it has been held that the value of a suit as found by the Court, and not the value as originally put by the plaintiff on his relief determines the forum of appeal.[20]

PART I.

SUITS RELATING TO LAND.

Extent and commencement of Part I.

2. This part shall extend to such local areas, and come into force therein on such dates as the Governor-General in Council by notification in the *Gazette of India*, directs.

11. APPLICATION TO PUNJAB.—Part I of the Act was extended to Punjab, by Government of India, Home Department Notification No. 210, dated the 20th February, 1889, to come into force on the first day of March, 1889.

Power for Local Government to make rules determining value of land for jurisdictional purposes.

3. (1) The Local Government may, *subject to the control* of the Governor-General in Council, make rules for determining the value of land for purposes of jurisdiction in the suits mentioned in the Court-Fees Act, 1870, Section 7, paragraphs (*v*) and (*vi*) and paragraph (*x*), clause (*d*).

(2) The rules may determine the value of any class of land, or of any interest in land, in the whole or any part of a local area, and may prescribe different values for different places within the same local area.

12. AMENDMENTS.—The words "subject to the control" were substituted for the words "with the previous sanction", by the Devolution Act (XXXVIII of 1920).

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(18) *Madhodas* v. *Ramji Patak*, 16 All. 286; *Sudarsan* v. *Ram Pershad*, 33 All. 97=7 I.C. 385; *Kannayya Chetti* v. *Venkata Narasayya*, 39 I.C. 439=40 Mad. 1=32 M.L.J. 221=5 M.L.W. 580; also see *Mahabir Singh* v. *Behari Lal*, 13 All. 320.

(19) *Muhammad Abdul Majid* v. *Ala Bux*, 86 I.C. 1055=23 A.L.J. 216=1925 All. 376=47 All. 534: also see and cf. *Nilmoney Singh* v. *Jagabandhu Ray*, 23 Cal. 536 and *Pitam Singh* v. *Bishan Narain*, 1931 Oudh 58 =130 I.C. 339.

(20) *Sundar Das* v. *Umda Jan*, 82 I.C. 614=5 Lah. 481=6 L.L.J. 355=1925 Lah. 1 (F.B.); *Budhamal* v. *Ralia Ram*, 1928 Lah. 157 (2)=9 Lah. 23=29 P.L.R. 320=110 I.C. 631; followed *Ijjatulla Bhuyan* v. *Chandra Mohan*, 34 Cal. 954=6 C.L.J. 255=11 C.W.N. 1133 (F.B.) and *Ibrahimji Issaji* v. *Bejanji Jamsedji*, 20 Bom. 265.

13. RULE-MAKING POWER OF LOCAL GOVERNMENTS.—Under S. 3 (1), Suits Valuation Act, Local Governments are empowered to make rules for determining the value of land for purposes of jurisdiction in the suits mentioned in the Court-Fees Act, S. 7 (*v*), (*vi*). When such rules are made, S. 14 in Madras Civil Courts Act (III of 1873) is to be deemed repealed.[21]

Where the value of the subject-matter has been determined by rules made under S. 9, its value for purposes of jurisdiction and Court-fee shall be as determined by such rules but the value for purposes of jurisdiction can never exceed the value of the land as determined by rules framed under S. 3.[22]

The Punjab Government has made rules under this section: and rules have been framed also in Central Provinces and in Oudh by the Local Governments—*vide* Appendix.

14. PUNJAB RULES—Manner of determining the value of land for purposes of jurisdiction in certain classes of suits.—The following rules made by the Local Government, under the power conferred by S. 3 of the Suits Valuation Act, 1887, and published in the Punjab Government Notification No. 255, dated the 4th March, 1889, for determining the value of land for purposes of jurisdiction in the suits mentioned in the Court-Fees Act, S. 7, paragraphs (*v*) and (*vi*), and paragraph (*x*), cl. (*d*), are republished for information and guidance:—

"I. In suits for the possession of land the value of the land, for purposes of jurisdiction, shall be held to be as follows:—

(*a*) Where the land forms an entire estate, or a definite share of an estate paying annual revenue to Government or forms part of such an estate, and the annual revenue payable for such part is recorded in the Collector's register, and such revenue is permanently settled,—*sixty times the revenue assessed on the land.*

(*b*) Where the land forms an entire estate, or a definite share of an estate paying annual revenue to Government, or forms part of such estate and is recorded as aforesaid, and such revenue is settled but not permanently, —*thirty times the revenue so payable.*

Explanation to clause (*b*).—Where the land is a fractional share or a portion of part of an estate, and the land revenue payable for such part is recorded in the Collector's register, and such revenue is not permanently settled, the value for purposes of jurisdiction shall be held to be thirty times such portion of the revenue recorded in respect of that part as may be rateably payable in respect of the share or portion.

Illustrations.

(1) In a suit for possession of a one-third share of the entire holding of 10 ghumaos forming part of an estate, and recorded as paying Rs. 20 annual revenue, the value of the land for the purposes of jurisdiction is one-third of thirty times Rs. 20, or Rs. 600.

(2) In a suit for possession of ghumao out of the same holding, the value of the land is one-tenth of thirty times Rs. 20, or Rs. 600.

(*c*) Where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of

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(21) *Narayan Nair* v. *Cheria Kathiri Kutty*, 45 I.C. 89=34 M.L.J. 97=41 Mad. 721.

(22) *Barru* v. *Lachhman*, 22 I.C. 503=111 P.R. 1913=228 P.W.R. 1913=23 P.L.R. 1914 (F.B.).

such revenue, and net profits have arisen from the land during the year next before the date of presenting the plaint—fifteen times such net profits. But where no such net profits have arisen therefrom,—the market-value.

(*d*) Where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate, and does not come under clauses (*a*) or (*b*) or (*c*) of this rule,—the market-value of the land.

(*e*) Where the subject-matter is a garden,—the market-value of the garden.

II. In suits to enforce right of pre-emption in land the value of the land, for the purposes of jurisdiction, shall be calculated by the preceding rules.

III. When the land or interest in suit falls partly under one and partly under another of the classes enumerated in R. 1 the value of the land in each class shall be separately calculated.

IV. In the application of the above rules the word 'land' includes all such right, *e.g.*, shares in village common and in wells as are necessary to the land in suit and the word 'revenue' as used in the preceding rules when applied to land irrigated from canals, shall be held to include owner's rate for the year next before the date of presentation of plaint, or half the occupier's rate for the same period in cases in which no owner's rate is chargeable.

V. In suits for specific performance of an award so far as the award relates to land, the market-value of the land.

VI. Suits relating to life-interest in land and suits relating to an occupany right shall, for purposes of jurisdiction be deemed to be of half the value provided for suits for possession under Rule 1."

15. **PUNJAB INSTRUCTIONS.**—Instructions on the subject of the Suits Valuation Act, 1887, and the rules made thereunder, for determining the value of certain classes of suits for the purposes of Court-fees and jurisdiction.

The attention of all Civil Courts is drawn to the following instruction on the subject of the provisions of the Suits Valuation Act (VII of 1887).

2. Part I of the Act was extended to this Province by Government of India, Home Department, Notification No. 210, dated the 20th February, 1889, and the Local Government has made rules under S. 3 of the Act determining the value of land and certain interests therein, for the purposes of jurisdiction in suits mentioned in the Court-Fees Act, 1870, S. 7, paragraphs (*v*) and (*vi*) and paragraph (*x*), clause (*d*), which are republished as above.

3. No restriction under S. 3, sub-S. (2) of the Act have been imposed as to the classes of land to which the rules apply, or as to the local extent of their operation, and they apply therefore to all land generally throughout the province, whether assessed with land revenue or not.

4. Section 4 of the Suits Valuation Act provides that, where a suit mentioned in the Court-Fees Act, S. 7, paragraph (*iv*) or Schedule II, Art. 17 relates to land or an interest in land, of which the value has been determined by the rules made under S. 3, the amount at which the relief sought in the suit is valued for the purposes of jurisdiction shall not exceed the value of the land or interest as determined by those rules. The suits falling under S. 7, paragraph (*iv*) of the Court-Fees Act are certain suits in regard to which the plaintiff is required to state the amount at which he values the relief sought in the plaint. Where the value so stated exceeds the value of the land or interest therein as fixed by the rules, the latter and not the former must be regarded as the value for the purposes of jurisdiction. The suits specified in Schedule II, Art. 17 of the Court-Fees Act are those for which it is difficult to fix a correct valuation, and a fixed fee of Rs. 10 is accordingly levied in these cases. Where any such case relates to land or any interest in

land the value for the purposes of jurisdiction will be the value of the land or interest as fixed by the rules.

5. The suits falling under the Court-Fees Act, S. 7, paragraphs (*i*), (*ii*), (*iii*), (*vii*), (*viii*), (*ix*) (*x*) (*a*), (*b*), (*c*) and (*xi*) (*a* to *f* inclusive) are, with one or two exceptions, either such as are subject to an *ad valorem* Court-fee, in regard to which the value for the purposes of computing the Court-fee and the value of the purposes of determining jurisdiction are, under S. 8 of the Suits Valuation Act, 1887, the same; or suits dealt with by directions made by the High Court under S. 9 of the Act.

6. In order to guard against mistakes as to the value of a suit for purposes of jurisdiction and of Court-fee, respectively, every plaint ought upon its face to show the value for purposes of jurisdiction as well as the value for the purposes of computing Court-fees. The former information is requisite in order that the Court may determine whether the plaint should be returned under O. VII, R. 10, of the Code of Civil Procedure. When a plaint omits to disclose the value of the suits for the purposes of jurisdiction, the person presenting it should be questioned, and his answer recorded on the plaint, unless he consents to amend it then and there.

7. As special care is necessary with respect to cases falling under the provisions of S. 7, paragraph (*iv*) and Schedule II, Art. 17 of the Court-Fees Act, in valuing suits for the purposes of jurisdiction and of Court-fees, a Schedule showing the value in each class of these cases has been prepared to guide the Courts in fixing the value in particular cases, and the opportunity has been taken to prepare an exhaustive schedule following the classification of suits in the Court-Fees Act. It must be clearly understood, however, that this schedule in itself has no legal force, and that it is merely intended for ready reference by the Courts in dealing with questions of value. An examination of the schedule will show that it is in only a few cases in which it is not possible to value the suit for purposes of jurisdiction, either by the actual value of the subject-matter, or by reference to the provisions of Ss. 4 and 8 of the Suits Valuation Act, and the rules under S. 3, and directions under S. 9 of the Act.

8. There is no express provision in the Suits Valuation Act, 1887, in regard to the classes of suits mentioned below and they do not admit of being disposed of by rules under Part I, nor are they dealt with by directions under Part II of the Act. The valuation of such suits, therefore, must be left to judicial decision, as occasion arises. The suits are:—

Suits for houses;

Suits for pre-emption in respect of houses;

Suits by or against mortgagors or mortgagees as such;

Suits falling under Schedule II, Art. 17, Clause (*iv*), which are not provided for by the rules under S. 3 or directions under S. 9 or by S. 4 of the Suits Valuation Act;

Suits falling under S. 7, sub-S. (*x*), cl. (*d*) of the Court-Fees Act, and relating to property other than land.

9. In the cases of some other classes of suits, such as those falling under Arts. 14 and 20 of Sch. II of the Court-Fees Act, or suits relating to marriage and minority; the law allows no choice of the Court in which proceedings must be taken. There is, therefore, no necessity, to fix any valuation fees for the purposes of determining jurisdiction, while for purposes of Court-fees they are sufficiently dealt with by the Court-Fees Act, 1870.

16. VALUATION FOR JURISDICTION UNDER THE PUNJAB RULES.—Where an alienation contested by the reversioners of the alienor, a childless proprietor purported to be for over Rs. 1,000 and the value of the land alienated at 30 times the revenue was less than Rs. 1,000, it was held by the Punjab Chief Court that the value for purposes of jurisdiction was less than Rs. 1,000, and no further appeal lay to the Chief Court, in the absence of a certifi-

cate under S. 40 (1) (*d*) of the Punjab Courts Act, S. 40. It was observed that the suit as brought came within the description of claims mentioned in No. II of the rules issued under Part II of the Suits Valuation Act, but was subject to the provisions of Part I of the Suits Valuation Act, and the rules in force thereunder; and as the subject of the alienation in dispute was land, as specified in S. 3 of the Suits Valuation Act, the value of the suit for purposes of jurisdiction could not exceed 30 times the revenue. (*Vide* S. 4, and the rules made under S. 3.)[23] Under the rules made under Act VII of 1887, and contained in Chief Court Book Circular V of 1889, a plaintiff in a suit for custody of wife could value the suit in his plaint at any sum exceeding Rs. 500 but not exceeding Rs. 1,000.[24] A suit for possession by foreclosure of mortgage by conditional sale, under Regulation XVII of 1806, is one "*for possession of land*" within S. 7 (*v*) of the Court-Fees Act, and not a "suit by a mortgagee to foreclose the mortgage", within clause (*ix*) of the same section, such suits being unknown in the Punjab, where the foreclosure takes place under the provisions of Regulation XVII of 1806 in proceedings which are not judicial but ministerial. Accordingly, the value of the subject-matter of such a suit for jurisdictional purposes had to be determined by rules made under S. 3 of the Suits Valuation Act, 1887, *viz.*, at thirty times the revenue.[25] Reliance was placed on 56 P.R. 1892 (F.B.), where it was held that a suit by a mortgagee claiming possession of mortgaged land as such under the terms of his mortgage-deed falls under S. 7, cl. (*v*) of the Court-Fees Act, and rules made under S. 3 of the Suits Valuation Act.[26] Where a suit for pre-emption of reversionary rights in certain land was valued for jurisdictional purposes at Rs. 3,800 at 30 times the *jama,* and the deed of sale stated the purchase-money to be over Rs. 5,000, and plaintiff alleged that only Rs. 2,900 had passed, on a question of valuation of suit for purposes of jurisdiction in appeal against the decree dismissing the suit as premature, it was held that the suit being for the acquisition of a contingent interest in land, and not for possession of a present interest, was not covered by the R. 2 of the rules framed under S. 3 of the Suits Valuation Act by the Local Government, that the distinction between *land* and *interests in land* is well recognised in S. 3 and in the rules and the present claim was not one for right of pre-emption *in land*: and, that failing a provision under the Suits Valuation Act, the test of jurisdiction must be furnished by the plaint and appeal consequently lay to the Divisional Judge, although the market-value of the property was found to be Rs. 7,000.[27] It was remarked "that even if the first Court had held the value to be more than Rs. 5,000, and given a decree on payment of such a sum, the jurisdiction of the Divisional Judge would not have been affected, for it depends on the value of the suit, and not

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(23) *Bakhu* v. *Jhanda,* 145 P.R. 1892.
(24) *Sher* v. *Must. Hasho,* 53 P.R. 1891.
(25) *Telu Mal* v. *Lal Singh,* 20 P.R. 1893.
(26) *Ram Kishen* v. *Sayad Brahim Shah,* 56 P.R. 1892 (F.B.).
(27) *Haider Khan* v. *Ali Akbar,* 18 P.R. 1897.

of the decree."[28] A suit brought by the plaintiff's occupancy tenants against their landlord for declaration that the latter were not entitled to recover more than a certain share of the produce, was held covered by S. 4 of the Suits Valuation Act; and the jurisdictional value of the suit under the rules framed under the provisions of S. 3 was 15 times the land revenue. This amount being less than Rs. 1,000, and both the lower Courts having agreed in dismissing the suit, no further appeal was held competent.[29] In the Punjab the value of a pre-emption suit for purposes of jurisdiction is 30 times the proportionate amount of revenue recorded as payable for the holding in which the land in suit is comprised, even though it be a specified plot by metes and bounds and not a definite share of the holding.[30] This gives the jurisdictional value to *entertain* the suit, which is to be distinguished from the competency of the Court to decree the suit. The ordinary practice followed in Punjab is to return the plaint for presentation to a Court of competent jurisdiction, where a Court has no jurisdiction to pass a decree for pre-emption on payment of a sum of money beyond his pecuniary limits of jurisdiction.[31]

Valuation of relief in certain suits relating to land not to exceed the value of the land.

4. Where a suit mentioned in the Court-Fees Act, 1870, Section 7, paragraph (*iv*) or Schedule II, Article 17, relates to land or an interest in land of which the value has been determined by rules under the last foregoing section, the amount at which for purposes of jurisdiction the relief sought in the suit is valued shall not exceed the value of the land or interest as determined by those rules.

COMMENTS.

17. SCOPE.—Under S. 4 of the Suits Valuation Act, the plaintiff is not entitled to put a higher value on the suit than what is covered by his interest in the litigation.[32] The value for purposes of jurisdiction cannot exceed the value as arrived at by applying the rules under the Court-Fees Act.[33] The decision of

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(28) *Haider Khan* v. *Ali Akbar*, 18 P.R. 1897.

(29) *Jamal* v. *Qadir Bux*, 54 P.R. 1914=238 P.L.R. 1914=153 P.W.R. 1914=25 I.C. 437.

(30) *Arshad Ali* v. *Zorawar Singh*, 92 I.C. 986=8 L.L.J. 60=1926 Lah. 386.

(31) *Waryam Singh* v. *Bela Singh*, 16 P.W.R. 1907; followed in *Gulshair Ali* v. *Wazira*, 79 P.W.R. 1907.

(32) *Narayan Singh* v. *Aiyasami Reddi*, 31 I.C. 188=39 Mad. 602 (603); also see *Achattil Balakrishna Nair* v. *Vishnu Nambudiri*, 1931 Mad. 375=1930 M.W.N. 509=132 I.C. 129.

(33) *Achattil Balakrishna* v. *Vishnu Nambudiri*, 1931 Mad. 375=132 I.C. 129.

the Judicial Committee in *Phul Kumari* v. *Ghanshyam Misra*[34] is to the same effect, *viz.*, that the value of the action is its value to the plaintiff. Where the local Government has not made any rules contemplated in S. 3, some High Courts consider that it is open to plaintiff to adopt any value he pleases for the purpose of jurisdiction.[35] But, as observed by Aston, J., in *Dayaram* v. *Gordhandas*,[36] "there is no express provision in the Suits Valuation Act making the valuation for the purposes of jurisdiction *prima facie* determinable by the plaintiff in any suit which can be valued lower for the computation of Court-fees." "On the other hand S. 4 of the Suits Valuation Act seems to indicate that the principle adopted by the legislature for valuing a suit mentioned in Sch. II, Art. 17, which relates to land or an interest in land is that the value of such a suit for purposes of jurisdiction shall be governed by the value of the land or interest in land."[37]

18. OPTION OF PLAINTIFF, HOW FAR EXERCISABLE—Suits for declaration with consequential relief.—In suits for declaration with consequential relief falling under S. 7 (*iv*) (*c*) of the Court-Fees Act, the valuation of the relief sought, according to the LAHORE High Court, rests expressly with the plaintiff, and the Court must accept such valuation for the purposes of Court-fee.[38] As a general rule, in such cases, under S. 8 of the Suits Valuation Act, the value of the relief sought by plaintiff for purposes of Court-fees is to be taken, despite anything to the contrary in the plaint, as the value for purposes of jurisdiction. But, when the suit relates to land or to an interest in land of which the value has been determined by rules under S. 3 of the Suits Valuation Act, the amount at which for purposes of jurisdiction the relief sought in the suit is valued cannot exceed the value of the land or interest as so determined (S. 4 of the Suits Valuation Act). Accordingly, the valuation of a SUIT FOR DECLARATION AND INJUNCTION, at Rs. 130, was held competent, and this was to be also the value for jurisdiction, inasmuch as Rs. 130 did not exceed the value of land or interest in land in dispute.[39] Where plaintiffs asks for declaration as his first relief, and possession as a consequential relief, he is bound to pay Court-fee *ad valorem*, on the valuation under S. 7 (*iv*) (*c*), and this will also be the value of suit for purposes of jurisdiction.[40] The ALLAHABAD High Court holds that

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(34) 35 Cal. 202=12 C.W.N. 169=7 C.L.J. 36=35 I.A. 22 (P.C.).

(35) *Chinnammal* v. *Madarsa Rowther*, 27 Mad. 480; also see and cf. *Lakshman* v. *Babaji*, (1883) 8 Bom. 31.

(36) 31 Bom. 73 (79).

(37) 31 Bom. 73 (80).

(38) *Barru* v. *Lachhman*, 111 P.R. 1913=228 P.W.R. 1913=23 P.L.R. 1914=22 I.C. 503 (F.B.); also see *Sunderbai* v. *Collector of Belgaum*, 52 I.C. 897=43 Bom. 376 (P.C.) (*Held*, that in a suit for declaratory decree and consequential relief, the amount at which the plaintiff values the relief for Court-fee purposes, determines the jurisdictional value of the suit or appeal). Also see *Ghulam Haider* v. *Bishambardas*, 140 I.C. 73 =33 P.L.R. 458; 118 I.C. 357=1929 Cal. 645=32 C.W.N. 231 (to same effect).

(39) *See* 111 P.R. 1913 (F.B.), *supra*.

(40) *Tula Ram* v. *Dwarkadas*, 115 I.C. 655=50 All. 610=1928 All. 248 =26 A.L.J. 316.

where the Court comes to the conclusion that the plaintiff's valuation was deleberately fictitious, it can compel the plaintiff to make a fresh valuation, but that it cannot fix a valuation itself in place of the plaintiff's valuation.[41] The CALCUTTA view is that where the Court simply accepts the valuation given by the plaintiff without attempting to ascertain the materials on which the valuation was based, and fails to arrive at a judicial decision at all, the High Court can interfere if satisfied that the decision of the Court below was wrong.[42] But, where in a suit for declaration of title to some jungle land, and damages, the plaintiff had valued the declaration with injunction at Rs. 130, and the damages at Rs. 79, the High Court of Calcutta held that though the value of the whole jungle was Rs. 1,200, it was neither the duty nor within the power of the Court to ascertain the value of the property for purposes of jurisdiction.[43] But, it was observed in some later cases, that plaintiff shall truly and reasonably state the value of his relief in such cases.[44] The BOMBAY High Court is of opinion that where the value of a suit is not determined by rules made under S. 3, the value should not be left to the option of plaintiff, but that the value must be (where disputed) determined by judicial decision in the suit, such determination being subject to the provisions of S. 11 of the Suits Valuation Act.[45] But in later cases, plaintiff's valuation has been accepted.[46] According to the PATNA High Court, in a suit falling under S. 7 (*iv*) (*c*) of the Court-Fees Act, it is not open to the plaintiff to put an arbitrary and incorrect valuation on the relief sought. Section 7 (*iv*) (*c*) was held to mean that the valuation for the purposes of Court-fee is to be made in the first instance by the party concerned but is finally determinable by the Court.[47] The MADRAS High Court accepts plaintiff's valuation. In *Samiya Mavali* v. *Minammal*[48] where the plaintiff SUED TO SET ASIDE A SALE-DEED, and valued his relief at Rs. 800, but the trial Court assessed the value at Rs. 2,000, the amount mentioned in the sale-deed, the High Court on second appeal held that the proper valuation of the relief was the valuation put by the plaintiff in his plaint. In *Parathayi* v. *Sankumani*[49] the plaintiff in a SUIT TO SET ASIDE A DEED

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(41) *Ashiq Ali* v. *Imtiaz Begam*, 42 I.C. 891 (893)=39 All. 723=15 All.L.J. 794.

(42) *Port Canning, etc., Company* v. *Roson Ali Mollah*, 15 I.C. 46.

(43) Cf. *Hari Sankar* v. *Kali Kumar*, 32 Cal. 734=9 C.W.N. 690.

(44) *Raj Krishna* v. *Bepin Beharey*, 17 I.C. 162=40 Cal. 245; *Umatul Batul* v. *Nanj Koer*, 11 C.W.N. 705=6 C.L.J. 421 and *Krishnadas* v. *Haricharan*, 10 I.C. 865.

(45) *Daya Ram* v. *Gordhandas*, 31 Bom. 73 (80). See *Balakrishna* v. *Jankibai*, 44 Bom. 331=56 I.C. 340.

(46) Also compare *Vachhani Keshabhai* v. *Nanbha Bavaji*, 1 I.C. 108 =33 Bom. 307=11 Bom.L.R. 30 (plaintiff's valuation must be accepted, both for Court-fees and jurisdiction, despite defendant's objection) and *Sunderbai* v. *Collector of Belgaum*, 52 I.C. 897=43 Bom. 376=46 I.A. 15 (P.C.).

(47) *Ramsekhar Prasad Singh* v. *Sheonandan Dubey*, 2 Pat. 198=1923 Pat. 137=68 I.C. 316=73 I.C. 43=4 P.L.T. 71=1 P.L.R. 25.

(48) 23 Mad. 490=10 M.L.J. 240.

(49) 15 Mad. 294.

OF SALE of which the consideration was Rs. 60,500, paid a Court-fee of Rs. 10 only as on a declaratory suit, but the Court held that he must pay *ad valorem* fee on the value of his interest on the document. The PATNA view, in this state of conflict of authority, is to follow its practice of allowing plaintiff to put a reasonable value.[50]

19. DECLARATORY SUITS—VALUATION FOR JURISDICTION—SCH. II, ART. 17.—In the Punjab, a suit for declaratory decree where no consequential relief is prayed, is valued as to land under Ss. 3 and 4 and by the rules framed by the High Court, *i.e.*, according to the value of the land or the interest in land. Accordingly, where the plaintiff sued for declaration that certain land is *Shamilat deh*, and liable to partition, it was held that the valuation for purposes of jurisdiction was at 30 times the *jama* of the *entire* land and not of plaintiff's share in it.[1] The value of the land under the rules framed by the Local Government is not affected by the suit being for a declaratory decree only, and not possession; and, the declaration asked for was in respect to the whole land, and not with reference only to the plaintiff's share in it, being a declaration with respect to the nature of the land, *viz.*, whether it is the joint property of the whole village, or the separate ownership of the persons severally in occupation of the different portions of the same.[2] In a suit for declaration, the Court-fee is a fixed one of Rs. 10 under Sch. II, Art. 17 of the Court-Fees Act, but S. 4 of the Suits Valuation Act deals with the value for purposes of jurisdiction in such suits: and this valuation so indicated is not less than 30 times the *jama*, whilst S. 4 of the Suits Valuation Act provides that it could not be more.[3] The MADRAS High Court has held in *Madukuri Ankamma* v. *Muvvalla Subbayya*[4] that the general principle is laid down by the Privy Council in *Phul Kumari* v. *Ghanshyam Misra*[5] and is to the effect that the value of the action is its value to the plaintiff. Accordingly, where in a suit for declaration that an attachment in execution of a decree against the judgment-debtor does not affect a mortgage of the property in plaintiff's favour, the mortgage itself is not in dispute, the property need not be valued, and the proper valuation for the purpose of jurisdiction is the amount for which execution is sought.[6] The PATNA High Court holds that the value of a suit for a declaratory decree must, for the purposes of jurisdiction, be taken to be the value of the

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(50) *Shama Pershad* v. *Sheoparsan Singh*, 41 I.C. 95 (If plaintiff puts a ridiculous value upon his consequential relief, the Court must step in and fix a reasonable value for him) and *Brij Krishna* v. *Murli Rai*, 56 I.C. 316=4 P.L.J. 708; cited in 2 Pat. 198=73 .C. 43, *supra*.

(1) *Khuda Yar* v. *Wahib Din*, 35 P.R. 1901.

(2) *Ibid.*, 35 P.R. 1901.

(3) *Sohan Singh* v. *Sunder Singh*, 81 P.R. 1918=199 P.L.R. 1918 =115 P.W.R. 1918=46 I.C. 490.

(4) 54 I.C. 543=37 M.L.J. 611.

(5) 35 Cal. 202=7 C.L.J. 36=12 C.W.N. 169=35 I.A. 22 (P.C.).

(6) 54 I.C. 543=37 M.L.J. 611, *supra*; compare *Fisher* v. *Arunachallam*, 2 I.C. 522=19 M.L.J. 236=5 M.L.T. 70 (dispute between mortgagor and mortgagee as to whether plaintiff's mortgage had been discharged).

property in respect of which the declaration is asked for.[7] In a disputed case of valuation, the Court has jurisdiction to decide the question, and S. 11 of the Suits Valuation Act is no bar to defendant's objection being taken and entertained in second appeal, where the point was raised in Courts below.[8] Their Lordships of the PRIVY COUNCIL have observed in *Rachappa* v. *Shidappa*,[9] that it is contrary to the scheme of the Court-Fees Act that there should be any valuation of a suit for declaration of title *only*, and the practice in Bombay of valuing a prayer for declaratory decree at Rs. 130 as being the value on which the fee nearest to Rs. 10 would be leviable, has no warrant in law. It was held that "if any part of the fee payable and paid was a fixed fee under Sch. II of the Court-Fees Act, then the NOTIONAL VALUE OF THE PROPERTY or any part of it COULD NOT DISPLACE ITS REAL VALUE for the purposes of jurisdiction."[10] This decision has been followed in *Inayat Husain* v. *Bashir Ahmad*,[11] and *Jagdish Saran* v. *Jaidai Kunwar*.[12] In a suit for DECLARATION, WITHOUT CONSEQUENTIAL RELIEF, coming under Art. 17-A. (1), Sch. II, of the Court-Fees Act (Madras Amendment) the valuation for purposes of jurisdiction must be the market-value of the property to the extent that the declaration for which the plaintiffs pray, if they obtain it, would affect their interests.[13] But, in a suit by the nearest female reversioners claiming only a life-estate against another limited owner in possession of immoveable property for DECLARATION IN RESPECT OF ALIENATIONS made by the latter the value for jurisdiction is the market-value of the property alienated.[14] A suit for avoiding a mortgage decree to which plaintiff was not a party is not a suit for declaration with a consequential relief, but a suit for a mere declaration, and the jurisdictional value of such a suit is the value of the property mortgaged.[15] A CLAIM SUIT UNDER O. 21, R. 63, C. P. CODE, to cancel the attachment of the judgment-debtor's property in execution of the decree, and also to declare that the judgment-debtor has no interest in the property attached, is to be valued for purposes of jurisdiction at the market-value of the land, and not the amount due under the decree in execution of which the land was attached.[16] The rule laid down by the RANGOON High Court is that where an unsuccessful claimant desires not only that the attachment should be removed, but also that his title as against

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(7) *Mohini Mohan* v. *Gourchandra Rai*, 56 I.C. 762=5 P.L.J. 397=1 P.L.T. 390.

(8) *Ibid.*, 56 I.C. 762 (763, 764).

(9) 50 I.C. 280=43 Bom. 507=21 Bom.L.R. 489=46 I.A. 24=36 M.L.J. 437 (P.C.), etc.

(10) *Ibid.*, 50 I.C. 280 (284)=43 Bom. 507 (P.C.).

(11) 1932 All. 413=141 I.C. 141.

(12) 1933 All. 903=144 I.C. 942 (market-value determining the jurisdiction in a suit for determination of title, and it is not open to the plaintiff to value his relief as he likes).

(13) *Kattiya Pillai* v. *Ramaswamia Pillai*, 1929 Mad. 396=56 M.L.J. 394=29 M.L.W. 584=1929 M.W.N. 286=119 I.C. 35.

(14) Cf. *Dhanabhagiammal* v. *Mari Ammal*, 1932 Mad. 671=139 I.C. 471.

(15) *Sukhdial* v. *Durgadas*, 113 I.C. 908=1929 Lah. 446.

(16) *Narayan Singh* v. *Aiyasami Reddi*, 31 I.C. 188=29 M.L.J. 728; also see 39 Mad. 602=27 I.C. 265.

the judgment-debtors should be declared, in cases in which the value of the property attached is more than the value of the decree, the value of the suit which governs the jurisdiction of the Court to deal with it is the value of the property itself, and not merely the value of the decree.[17]

20. **FORECLOSURE.**—Suits for sale, and suits for foreclosure should be treated as governed by the same principle for purposes of valuation for jurisdiction, *viz.*, the value of the suit should be determined by the total amount of the claim, as due for principal and interest under the mortgage, when the value of the property exceeds this amount[18]; but where the value of the property is less than the amount of the charge, it can be dealt with as in *Krishnamachariar* v. *Srinivasa Ayyangar*.[19] It was held by the MADRAS High Court, that for the purpose of jurisdiction (Madras Civil Courts Act, 1873), the subject-matter of a suit to establish the validity of a charge upon property is, when the property is in excess of the charge, the amount of the charge; when the charge is in excess of the property, the value of the property.[20] Where the purchaser of mortgaged property, being a defendant in the mortgagee's suit for foreclosure, preferred an appeal against the decree for foreclosure made in the suit, the amount found due on the mortgage being over a lakh of rupees, but the amount for which the appellant had purchased the property was Rs. 2,500, it was held that the value of the subject-matter in dispute for purposes of appeal was Rs. 2,500, the value of the property affected by the decree.[21]

21. **LANDLORD AND TENANT.**—A suit to eject a tenant at fixed rates is a suit for the possession of land within the meaning of S. 7 (*v*) of the Court-Fees Act, 1870, and the valuation of such suit for the purposes of Court-fees and of jurisdiction is the value of the subject-matter of the suit, that is to say, of the tenant-right, not of the land itself nor of merely one year's rent.[22] A suit by the plaintiff's occupancy tenants against their landlord for declaration that the latter were not entitled to recover more than a certain share of the produce, is covered by S. 4 of the Suits Valuation Act, and the jurisdictional value of the suit under the rules framed under the provisions of S. 3 is 15 times the land-revenue.[23]

22. **MORTGAGE.**—The subject-matter of a suit to establish the validity of a charge upon property is the amount of charge when

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(17) *Daw Dut* v. *Daw Kwi*, 1932 Rang. 20=27 N.L.R. 335=135 I.C. 409.

(18) *Kothiram* v. *Ganpati*, 17 I.C. 886=8 N.L.R. 179; also see *Nana* v. *Mulchand*, 21 I.C. 918=9 N.L.R. 161 (The value for purposes of jurisdiction in a foreclosure suit depends not on the principal, but on the total amount claimed).

(19) 4 Mad. 339.

(20) *Ibid.*

(21) *Jagatdhar Narain Prasad* v. *Brown*, 33 Cal. 1133=10 C.W.N. 1010=4 C.L.J. 121.

(22) *Ramraj Tewari* v. *Girnandan*, 15 All. 63=12 A.W.N. (1892). 240.

(23) *Jamal* v. *Qadir Bux*, 54 P.R. 1914=25 I.C. 437.

the property is in excess of the charge, or the value of the property when the charge exceeds such valuation.[24] Where a Hindu father sought to avoid a mortgage-deed of half the property executed by the son in favour of his creditor, it was held by the Punjab Chief Court, that the jurisdictional value of the suit, for purposes of further appeal, was not the market-value of the half-share mortgaged, but of the defendant's rights in the property as mortgagee.[25] In a suit for sale under mortgage, where adverse claimants were impleaded, one of the claimants held not entitled to property appealed; it was held that the value of subject-matter was the value of property claimed by appellant.[26] A suit for a declaration that plaintiff's mortgage in respect of property attached in execution of a decree was subsisting need not be valued and stamped on the amount of the attachment. The effect of such a suit is merely to establish the mortgage against the attaching creditor, and the mortgagor.[27] A suit for a declaration that a mortgage-decree to which the plaintiff was not a party, is not binding on the plaintiff is merely a declaratory suit without consequential relief; the value for purposes of jurisdiction is the value of the property mortgaged.[28]

23. PARTITION.—The valuation of partition suits, for jurisdiction, is not that of entire property, but only of plaintiff's share in the said property, according to ALLAHABAD[29] and BOMBAY High Courts.[30] The SINDH Court approves of the reasoning in Bombay ruling,[31] that the value of share claimed determines value for purposes of jurisdiction. The claim itself was the immediate subject-matter. The PUNJAB Chief Court considers valuation of whole estate as absurd overvaluation.[32] The PRIVY COUNCIL, in rejecting an appeal, approved of the Bombay principle.[33] The CALCUTTA High Court holds that the value of the entire property in suit will govern jurisdiction.[34] According to MADRAS High Court,

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(24) *Krishnamachariar* v. *Srinivasa Ayyangar,* 4 Mad. 339 (F.-n. 20, *ante*).

(25) *Piarelal* v. *Ram Chand,* 21 P.R. 1912=112 P.W.R. 1911=11 I.C. 443.

(26) *Radha Kunwar* v. *Reote Singh,* 35 I.C. 939 (P.C.).

(27) *Fisher* v. *Arunachallam,* 5 M.L.T. 70=19 M.L.J. 236=2 I.C.

(28) *Sukhdial* v. *Durgadas,* 1929 Lah. 446=113 I.C. 908.

(29) *Wajibuddin* v. *Waliullah,* 24 All. 381.

(30) *John Joseph de Silva* v. *J. J. De Silva,* 6 Bom.L.R. 403; *Motibhai* v. *Haridas,* 22 Bom. 315; also see *Dagdu Sakharam* v. *Tota Ram Narayan,* 33 Bom. 658=4 I.C. 243 (Suit for partition and separate possession held to fall under S. 7 (*v*) of the Court-Fees Act: market-value determines jurisdiction of trial Court).

(31) *Wadhomal* v. *Chellomal,* 19 I.C. 870; follows 8 Bom. 31.

(32) 29 I.C. 766=108 P.L.R. 1915.

(33) 42 I.C. 966 (P.C.); cited in 6 Bom.L.R. 403.

(34) 8 Cal. 757=11 C.L.R. 95; *Rajani Kanta* v. *Rajabala,* 52 Cal. 128 =85 I.C. 870=1925 Cal. 320; also see *Biraj Mohini Dasi* v. *Chintamani Dasi,* 3 C.L.J. 197=10 C.W.N. 565; *Edward Dalglish* v. *Ramdhari Sahu,* 522. Compare *Madukuri* v. *Muvalla,* 54 I.C. 543=37 M.L.J. 611 (Suit for declaration that attachment does not affect plaintiff's subsisting mortgage is to be valued for jurisdiction at the amount for which execution is sought): 4 C.L.J. 509 (Valuation in trial Court on plaintiff's share erroneous, but not prejudicing disposal of suit); also see *Bhugwat Sahay* v. *Pashupati,*

a suit relating to coparcenary property, unless one for general partition, must be valued at the definite share claimed, both for Court-fee and jurisdiction.[35] A suit by a coparcener in possession for partition of joint family property, falls under S. 7 (*iv*) (*b*) of Court-Fees Act.[36] But a suit for partition by a co-tenant alleging himself to be in possession on behalf of himself and the other co-tenants, is incapable of valuation within the meaning of Sch. II, Art. 17 (*vi*) of the Act.[37] The PATNA High Court followed the Privy Council view in *Dukhi Singh* v. *Harihar Shah*[38] but the Privy Council case was distinguished in *Ranjit Sahi* v. *Maulvi Qasim*,[39] where it was held that value is to be the value of the entire property, and not only of the share claimed by plaintiff, where the plaintiff is in possession and there is no dispute as to title.[40] The NAGPUR Court distinguishes between simple suits for partition from suits for declaration of right to partition, or suits practically for ejectment (in form of partition suits).[41] According to RANGOON High Court the plaintiff's share determines valuation and Court-fee.[42] A detailed discussion of the subject is to be found in the comments under S. 7 (*iv*) (*b*) of the Court-Fees Act.

24. POSSESSION—VALUATION OF SUITS FOR.— Where a suit for possession is brought after a decree for foreclosure has been obtained, the valuation of suit for purposes of jurisdiction is not to be calculated according to the scale laid down in S. 7 (*ix*) of the Court-Fees Act.[43] The mode of computing the value of the subject-matter of a suit as provided there is applicable only to determining the amount of Court-fees to be paid, but not to the question of jurisdiction of the Court.[44] This will have to be determined by the aid of best evidence available, bearing upon the actual amount or value.[45] A suit for recovery of land which is a definite plot, forming part of a survey number, but neither sub-divided nor separately assessed to land-revenue, must be valued according to its market-value.[46] A suit for possession of land where buildings are not claimed, is to be valued at the market-value of land irrespective of buildings, both for the purposes of Court-fee and jurisdiction.[47] For the purpose of determining the

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10 C.W.N. 564=11 C.L.R. 95 and *Baidya Nath* v. *Makhan Lal*, 17 Cal. 680.

(35) 19 Mad. 56; approved in 20 Mad. 289.

(36) *Rangiah Chetty* v. *Subramania Chetty*, 8 I.C. 512 (F.B.).

(37) *Gill* v. *Lingamallu*, 55 I.C. 517=43 Mad. 396.

(38) 58 I.C. 236=1921 Pat. 89; follows 42 I.C. 966 (P.C.).

(39) 72 I.C. 916=2 Pat. 432=1923 Pat. 342 (no question of plaintiff's title or share involved).

(40) *Ibid.*, 72 I.C. 916, *supra*.

(41) 81 I.C. 643=1924 Nag. 105; also see and *cf.* 106 I.C. 770=1927 Nag. 248.

(42) 7 Rang. 164=1929 Rang. 211=118 I.C. 122.

(43) *Ahollya Bai* v. *Shama Churn*, 1 C.L.R. 473.

(44) *Jeebraj Singh* v. *Inderjeet Mahton*, 18 W.R. 109.

(45) *Nauhoon Singh* v. *Toofanee Singh*, 20 W.R. 33; also see *Chunder Nath* v. *Brindabun*, 25 W.R. 39.

(46) *Sundaramma* v. *Mangamma*, 47 I.C. 543=34 M.L.J. 558.

(47) 110 I.C. 319=1928 Lah. 852.

course of appeal in a suit for possession of a house, the market-value of the house as ascertained by the Court, and not the value as stated by the plaintiff in his plaint is to be considered according to the LAHORE High Court.[48] Where the suit is for determination of the proprietary right of plaintiff in a house, and for ejectment of the licensee, the subject-matter of the suit is the right to eject the defendant, and the value of the suit is the value at which the defendant's right to remain in the house under the licence of the plaintiff may be valued.[49]

25. In a suit for POSSESSION AND MESNE PROFITS, the value of the original suit depends not merely upon the value of the property sought to be recovered, but also upon the value or amount of the profits recoverable.[50]

26. In the Punjab the value of a PRE-EMPTION SUIT for purposes of jurisdiction is 30 times the proportionate amount of revenue recorded as payable for the holding in which the land in suit is comprised even though it be a specified plot by metes and bounds and not a definite share of the holding.[1]

27. REDEMPTION OF MORTGAGES.—The subject has been discussed in detail in the main portion of this work, under the heading "Valuation for Jurisdiction". [*Vide* S. 7 (*ix*).] But, it may be briefly noticed that different High Courts have taken different views on the question of valuation for jurisdiction in a suit for redemption. Such suits are excepted from the category of suits where the valuation for Court-fee and jurisdiction is the same, but the Suits Valuation Act has made no provision for their valuation. The ALLAHABAD,[2] MADRAS,[3] and NAGPUR[4] Courts have held that the value for Court-fee and jurisdiction is the same, *viz.*, the amount of principal mortgage-debt as mentioned in S. 7 (*ix*) of the Court-Fees Act. But, the CALCUTTA[5] and LAHORE[6] High Courts take the view that the valuation for the purposes of jurisdiction is determined by the Court finding the amount actually due on the basis of the mortgage, upon payment of which the mortgage can be redeemed, as this represents the value of the subject-matter of the suit. The BOMBAY[7] High Court holds that the amount due

(48) *Sundar Das* v. *Unda Jan*, 82 I.C. 614=5 Lah. 481=6 L.L.J. 355 (F.B.).

(49) *Barkutunnissa* v. *Kaniza Fatima*, 98 I.C. 817=5 Pat. 631=1927 Pat. 140.

(50) *Mohini Mohan* v. *Satish Chander*, 17 Cal. 704.

(1) *Arshad Ali* v. *Zorawar Singh*, 92 I.C. 986=8 L.L.J. 60=1926 Lah. 386.

(2) 5 All. 332; 8 All. 438; 31 All. 44=1 I.C. 703=5 A.L.J. 713.

(3) 5 Mad. 284 (F.B.); 28 I.C. 624=39 Mad. 447 and 91 I.C. 81 =1925 Mad. 1254; also see 1931 Mad. 479=132 I.C. 317=60 M.L.J. 698.

(4) 76 I.C. 131=1924 Nag. 346; 68 I.C. 226=1922 Nag. 259; 1929 Nag. 1.

(5) 51 Cal. 737=78 I.C. 747=1924 Cal. 783=28 C.W.N. 710.

(6) 96 I.C. 890=1926 Lah. 376=7 Lah. 570 (F.B.); compare 106 P.R. 1895 (F.B.); also see and cf. 44 P.R. 1888 (F.B.) and 72 I.C. 405=1923 Lah. 568 (Form of appeal to be determined by the claim).

(7) 11 Bom. 591; 13 Bom. 489; also see 14 Bom. 19 (23).

on the mortgage is to be taken as the valuation of the subject-matter of the suit for redemption, and where this sum is an unknown quantity, the amount of the mortgage determines the value of the subject-matter. The LAHORE[8] High Court holds that in a suit for redemption of immoveable property the value for purposes of jurisdiction is the amount found by the Court to be the value of the mortgagee's charge on the property, and not the amount alleged by the plaintiff to be due to the mortgagee.[9] But, the RANGOON[10] High Court holds that in a suit ror redemption and possession, the value of the property should be taken, while the NAGPUR Court[11] follows the Allahabad view; and holds that where surplus profits are claimed, the valuation is the principal amount expressed in the instrument of mortgage. In a suit for redemption of mortgage and surplus profits, the value of the subject-matter for purpose of jurisdiction is the aggregate value of two heads of relief.[12] The OUDH Court holds that in redemption suits the jurisdiction is governed by the amount of the principal mortgage money and not by the value of the property mortgaged.[13] Where mortgage is redeemed by a person not entitled, and the real owner sues him and the mortgagee for redemption, the valuation for jurisdiction is determined by the mortgage money.[14]

In a suit to redeem a *kanom* mortgage, if the plaintiff claims to recover arrears of rent, the value for jurisdiction is the aggregate value of the two heads of relief.[15]

Making and enforcement of rules.

5. (1) The Local Government shall, before making rules under Section 3, consult the High Court with respect thereto.

(2) A rule under that section shall not take effect till the expiration of one month after the rule has been published in the local official Gazette.

Repeal of Section 14 of the Madras Civil Courts Act, 1873.

6. On and from the date on which rules under Section 3 take effect in any part of the territories under the administration of the Governor of Fort Saint George in Council to which the Madras Civil Courts Act, 1873, extends, Section 14 of that Act shall be repealed as regards that part of those territories.

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(8) 7 Lah. 570, *supra.*

(9) 1929 Nag. 1=113 I.C. 34, *supra;* also see 57 I.C. 673 (Nag.).

(10) *Ma Hla Saing* v. *Ma Swe We,* 105 I.C. 412=1927 Rang. 304=5 Rang. 499.

(11) *See* F. N. (9) above and 55 I.C. 75 (Suit for redemption and surplus profits—Value for jurisdiction is the aggregate).

(12) 17 I.C. 886=5 N.L.R. 1879 cited in 55 I.C. 75.

(13) *Mohanlal* v. *Mohanlal,* 94 I.C. 784=3 O.W.N. 467=1926 Oudh 346. Followed 31 All. 44=A.W.N. (1908) 276=5 A.L.J. 713.

(14) 70 I.C. 311=26 O.C. 297=1922 Oudh 45.

(15) *Konna Panikar* v. *Karunakara,* 16 Mad. 328.

Comments.

28. SECTION 14, MADRAS CIVIL COURTS ACT.—Section 14 of the Madras Civil Courts Act, is as follows:—

"When the subject-matter of any suit or proceeding is land, a house or garden, its value shall, for the purposes of the jurisdiction conferred by this Act, be fixed in the manner provided by the Court-Fees Act 1870, S. 7, cl. (5)."

There is nothing to indicate that S. 8 of the Suits Valuation Act should be read subject to the provisions of S. 14 of the Madras Civil Courts Act.[16] It is doubtful whether S. 14 of the Madras Civil Courts Act was intended to cover a suit for the recovery of immoveable property from a tenant, but assuming that this suit fell under S. 7 (*v*) of the Court-Fees Act, the Amending Act VI of 1905 has taken it out of clause (*v*) and included it in clause (*xi*) of S. 7, "(*cc*) for the recovery of immoveable property from a tenant". This enlarges the scope of S. 8, Suits Valuation Act, which would now cover this category of suits, with the result that its value for jurisdiction is the same as for purposes of Court-fees.[17] It has been held by the MADRAS High Court that in suits to enforce registration of documents, the value of the transaction must be taken to be the value of the suit.[18] The proper valuation of a suit to enforce a right of pre-emption is, in accordance with S. 14 of the Madras Civil Courts Act, that fixed in the manner provided by the Court-Fees Act, S. 7 (*v*).[19]

PART II.

OTHER SUITS.

Extent and commencement of Part II.

7. This part extends to the whole of British India, and shall come into force on the first day of July, 1887.

Court-fees value and jurisdictional value to be the same in certain suits.

8. Where in suits other than those referred to in the Court-Fees Act, 1870, Section 7, paragraphs (*v*), (*vi*) and (*ix*) and paragraph (*x*) clause (*d*), Court-fees are payable *ad valorem* under the Court-Fees Act, 1870, the value as determinable for the computation of Court-fees and the value for purposes of jurisdiction shall be the same.

29. "DETERMINABLE."—The word "determinable" in S. 8 of the Suits Valuation Act applies as much to the final and exact and judicial determination made under S. 11 of the Court-

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(16) *Vamavalli Seshagiri* v. *Gopisetti*, 24 I.C. 374=26 M.L.J. 573.
(17) *Ibid.*; 24 I.C. 374.
(18) *Ramakrishnamma* v. *Bhagamma*, 13 Mad. 56 (59).
(19) *Narayan Nair* v. *Cheria Kathiri Kutty*, 41 I.C. 89=41 Mad. 721 =34 M.L.J. 397.

Fees Act as it does to the inexact and *ex parte* valuation in the plaint.[20] What *prima facie* determines the jurisdiction is the claim or subject-matter of the claim as estimated by the plaintiff.[21] But on principle this determination *prima facie* may, if unreasonable, be rejected.[22] Whether or not a suit has been properly valued is a preliminary question which ought to be disposed of before the case goes to trial.[23] Therefore, the words "as determinable," indicate that the determination is to be "by the Court who has to try the case".[24] It is nowhere enacted in the Act that where such value is not determined by rules made under S. 3, the value shall be such as the plaintiff chooses to adopt.[25] Where the value for jurisdiction is contested, the value must be determined by the Court.[25-a] The plaintiff's value will not determine jurisdiction where it is proved that the plaintiff has misrepresented the true value with the intention of getting a trial in a different Court from that intended by the Legislature or where the plaintiff has acted recklessly in valuing his suit or where the plaintiff has adopted a wrong method of valuation.[26] Fair valuation should be put upon every suit; if valuation is excessive, defendant should bring it to the notice of the Court.[26-a] The LAHORE High Court, in a Full Bench case, has taken the view that the value of a suit for possession of a house is the market-value as ascertained by the Court and not that stated by the plaintiff in his plaint.[27] But, the NAGPUR Court holds that valuation by plaintiff and not that found by the Court determines forum of appeal.[28]

30. **APPLICATION OF THE SECTION.**—Section 8 of the Suits Valuation Act, or the general rule, that the value for Court-fee governs the value for jurisdiction, cannot be applied to cases in which separate reliefs, no one of which exceeds the value of the property in suit, are claimed in the alternative in respect of that property: and the value for purposes of jurisdiction or further appeal in such a suit must be the market-value of the property.[29] The provisions of S. 8 of Act VII of 1887 apply to appellate Courts as well as to Courts of first instance, and the value of the subject-matter of suits for the purposes of jurisdiction must be determined

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(20) *Ibrahimji Maji* v. *Bejanji Jamsedji*, 20 Bom. 265.
(21) *Lakshman* v. *Babaji*, 8 Bom. 31 (33).
(22) 20 Bom. 265, citing 8 Bom. 31 (33).
(23) *Joytara Dassee* v. *Mahamed Mobaruck*, 8 Cal. 975; also see *Bai Meherbai* v. *Maganchand*, 29 Bom. 229; cited in *Dayaram* v. *Gordhandas*, 31 I.C. 73 (77).
(24) *Dayaram* v. *Gordhandas*, 31 I.C. 73 (77).
(25) *Ibid.*; 31 I.C. 73 (77).
(25-*a*) 56 I.C. 762=1921 Pat. 32.
(26) 6 O.C. 255; also see 13 All. 320: and 101 P.R. 1900.
(26-*a*) 88 I.C. 212=46 All. 553=1924 All. 652=22 A.L.J. 446.
(27) *Sundar Das* v. *Umdar Jan*, 5 Lah. 471=82 I.C. 614=1924 Lah. 1 (F.B.).
(28) *Cf.* 89 I.C. 407=1926 Nag. 71.
(29) *Nur Ilahi* v. *Umar Baksh*, 41 P.R. 1910=6 I.C. 715=56 P.L.R. 1910=65 P.W.R. 1910.

by the provisions of that section.[30] Section 8 does not cover redemption suits, so that in such a case valuation for the purpose of jurisdiction does not necessarily follow the valuation for the purpose of Court-fee.[31] The valuation of a suit for redemption for the purpose of jurisdiction depends not on the amount assured but on the amount ultimately found to be due.[32]

31. CONSTRUCTION OF SECTION 8.—It is provided in S. 8 of the Suits Valuation Act that valuation for purposes of jurisdiction and Court-fee shall be the same.[33] Where arbitrary valuation is allowed to plaintiff the Court-fee value, as put by plaintiff, determines the jurisdictional value of the suit also which follows the Court-fee value.[34] The ALLAHABAD High Court holds that the valuation for purposes of Court-fee is to be determined first, and that for the purposes of jurisdiction must follow on the same.[35] Similarly, the BOMBAY view is that where the valuation rests with plaintiff, the value for Court-fee is also value for jurisdiction.[36] The CALCUTTA High Court held in 32 Cal. 734, that the value for purposes of jurisdiction shall follow the value for purposes of Court-fee, but opposite view has been taken in some other cases that Court-fee cannot be reasonably paid at a lesser figure, if a value for jurisdiction is declared in the suit, or on memo. of appeal.[37] The LAHORE High Court holds that when an arbitrary value has been put by plaintiff on the relief for purposes of Court-fee, the same is the value for jurisdiction, which accordingly rests with him.[38] The PATNA High Court is of opinion that the plaintiff cannot give one valuation for the purpose of Court-fee and another valuation for purposes of jurisdiction quite arbitrarily. "A party is not entitled, where the valuation of the suit can be correctly ascertained to put a purely fancy value on the suit for the purpose of jurisdiction."[39] The valuation for assessment of Court-fees controls the valuation for purposes of jurisdiction[40]; and not that the value for purposes of jurisdiction is to be taken for purposes of payment of Court-fees.[41] "The right construction of S. 8 of

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(30) *Bai Varunda Lakshmi* v. *Manegavri*, 18 Bom. 207.

(31) *Sarada Sundari Basu* v. *Akramannessa Khatun*, 78 I.C. 747=51 Cal. 737=1924 Cal. 783.

(32) *Ibid.*

(33) *Dhaturi Singh* v. *Kedarnath*, 101 I.C. 506=8 P.L.T. 475=1927 Pat. 224.

(34) 137 I.C. 702=56 Bom. 23; 87 I.C. 190; also see 32 Cal. 734 and 111 P.R. 1913 (F.B.).

(35) 87 I.C. 190=47 All. 501=1925 All. 602 (Combined value of different reliefs taken).

(36) 56 Bom. 23=137 I.C. 702. *Cf.* 31 Bom. 73; also see and *cf.* (1918) L.R. 46 I.A. 15.

(37) 17 Cal. 680; 6 C.L.J. 427=11 C.W.N. 705 (710); Compare, 1930 Cal. 686=34 C.W.N. 870 (The value for purposes of jurisdiction shall follow the value to be given for purposes of Court-fee).

(38) 111 P.R. 1913=22 I.C. 503 (F.B.).

(39) 101 I.C. 506=8 P.L.T. 475=1927 Pat. 224, *supra*.

(40) *Sailendra Nath Mitra* v. *Ram Charan Pal*, 66 I.C. 268=25 C.W.N. 768=34 C.L.J. 94.

(41) *Ibid.*

the Suits Valuation Act is that the valuation for purposes of jurisdiction should in the cases mentioned there, follow and be the same as the valuation for Court-fees.[41-a] This view is supported by several High Courts.[42]

32. VALUATION FOR PURPOSES OF JURISDICTION: Account Suits.—[*See* S. 7 (*iv*) (*f*), Court-Fees Act.]

A suit for accounts, falling under S. 7 (*iv*) (*f*) of the Act, is not excluded by S. 8 of the Suits Valuation Act from the application of the rule that the valuation for Court-fees and jurisdiction shall be the same.[43] It follows that two values cannot be given, one for jurisdiction at a higher figure, and the other at a lesser amount for Court-fee. However, in a Bombay case, the valuation for Court-fee at Rs. 130, and value for jurisdiction at 30 lakhs, was accepted subject to the safeguard under S. 11 of the Court-Fees Act.[44] The anomaly of a higher valuation for jurisdiction, and a lower value for Court-fee is to be avoided in suits under S. 7 (*iv*) of the Court-Fees Act.[45] Thus, though the plaintiff can put his own valuation on the relief for Court-fee, the value for jurisdiction follows this valuation,[46] and if put at a higher figure has to be ignored.[47] In a suit for account, the valuation by plaintiff for Court-fee having determined jurisdiction, the defendant cannot alter valuation to choose forum of appeal.[48] In a suit for partnership account, the Court can pass a decree exceeding its pecuniary jurisdiction, according to the SINDH Judicial Commissioner's Court.[49] A distinction has been made, in suits for account, between the tentative and actual value of a suit upon which depends the jurisdiction of a Court to entertain the suit and to decree the claim.[50] The valuation of a suit for account may be either definite, or approximate. Where the relief claimed is indefinite, approximate or tentative, the value put upon the relief claimed is not final, but the real value is ascertained upon investigation, when the plaintiff accepts the amount determined by the Court.[1] Where this final real value is within the limits of Court's jurisdiction no difficulty arises, under the

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(41-*a*) 66 I.C. 268=25 C.W.N. 768=34 C.L.J. 94.

(42) *Hari Sanker Dutt* v. *Kali Kumar Patra*, 32 Cal. 734=9 C.W.N. 690; *Bai Varunda* v. *Manegavri*, 18 Bom. 207; *Velu Gounden* v. *Kumaravelu*, 20 Mad. 289=7 M.L.J. 30; *cf.* 92 I.C. 730=1926 Mad. 591 (Where Court-fee value omitted, the value for jurisdiction was taken for *ad valorem* fee).

(43) 22 Cal. 692; 34 Cal. 954 (F.B.); also see 66 I.C. 268=1921 Cal. 84; 18 Bom. 40; 1932 Mad. 565; *Contra*, 1932 All. 413.

(44) 18 Bom. 40; also see 19 Bom. 198 and 25 Mad. 543; 2 Rang. 408=1924 Rang. 354=86 I.C. 568=2 Bom.L.R. 307=86 P.R. 1892.

(45) 79 I.C. 358=46 All. 419; and 87 I.C. 190=47 All. 501=1925 All. 602; also 47 All. 534=1925 All. 376=86 I.C. 1055.

(46) 111 P.R. 1913=22 I.C. 503 (F.B.); 69 I.C. 577=1924 Lah. 364; also see 116 I.C. 908=1929 Lah. 566; and 9 Lah. 43.

(47) 45 Bom. 567=59 I.C. 777; 43 Bom. 376 (P.C.); 2 Rang. 408.

(48) 109 I.C. 895=1928 Pat. 535=9 P.L.T. 726.

(49) 89 I.C. 353=1925 Sind 324=18 S.L.R. 286.

(50) 46 P.R. 1906=94 P.L.R. 1906; 94 I.C. 650=1926 Lah. 242; and 2 Rang. 408=1924 Rang. 354=86 I.C. 568=2 Bur.L.J. 707.

(1) 34 Cal. 954 (962) (F.B.), per *Mookerji, J.*

safeguard of S. 11, Court-Fees Act.[2] But, where the amount exceeds the pecuniary jurisdiction, the *forum* of appeal is determined by the value so ascertained; and according to Mookerjee, J., if the plaintiff accepts the amount awarded to him, the value of the relief so ultimately claimed is the real value of the suit.[3] According to LAHORE High Court, in a suit for dissolution of partnership and accounts, where decrees are passed in favour of the plaintiff, and of the defendants, for various amounts as ascertained due on accounts, the aggregate of the specific amounts will represent the value of the subject-matter of the suit, even though the tentative value fixed by the plaintiff be less or more.[4]

33. ADMINISTRATION SUITS.—An administration suit is essentially a suit for account, within the meaning of S. 7 (*iv*) (*f*) and the valuation put by the plaintiff at his option for Court-fee purposes regulates the jurisdiction of Courts to entertain the suit on a plaint, or memorandum of appeal.[5] Where plaintiff filed a suit asking the Court to administer the estate of a deceased and give plaintiff her share in it, and valued the suit for jurisdiction at Rs. 15,000, and for Court-fee at Rs. 130, it was held by the PUNJAB Chief Court, that a suit for administration of an intestate estate has many features in common with a suit for winding up of an insolvent estate or a suit for dissolution of partnership, with taking of account and allotment to each parcener after all debts, etc., are settled up of his net share, and that it falls within the terms of S. 7, cl. (*iv*) (*f*), as a suit for account: and under S. 8 of the Suits Valuation Act, the valuation of such a suit for purposes both of jurisdiction and the Court-fee must be the same, and the valuation for jurisdiction being Rs. 15,000, plaintiff should have paid an *ad valorem* Court-fee on that amount.[6]

34. ADOPTION CASES.—There are three different types of cases relating to adoptions. *First,* declaratory suits, which involve a prayer for a consequential relief, falling under S. 7 (*iv*) (*c*) of the Court-Fees Act. *Secondly,* suits for mere declarations, with a fixed fee under Sch. II, Art. 17, cl. (*iii*) of the Act. *Thirdly,* suits to set aside an adoption falling under Sch. II, Art. 17 (*v*) of the Act. Where the relief relates to immoveable property, but involves also the question of the validity or otherwise of the adoption, as a consequential relief, the value of the suit is at the option of the plaintiff for purposes of Court-fees, and this is also the value of the suit for jurisdictional purposes.[7] It is competent

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(2) 34 Cal. 954 (962) (F.B.).

(3) 34 Cal. 954 (F.B.); also see 20 I.C. 928; 12 M.L.J. 66; 1932 Bom. 111=137 I.C. 702; *contra* 1 I.C. 86; 46 P.R. 1906; 44 Cal. 890.

(4) *Aruramal Uttam Chand* v. *Makhanmal Amir Chand,* 122 I.C. 730=1930 Lah. 725.

(5) *Sashi Bhusan* v. *Nundy,* 44 Cal. 890=38 I.C. 835; also see *Chandramani* v. *Basdeo,* 49 I.C. 442=4 P.L.J. 57; *Satya Kumar* v. *Satya Kripal,* 3 I.C. 247=10 C.L.J. 503; *Saraju Bala* v. *Jogmaya,* 45 Cal. 634=41 I.C. 693; compare *Khatija* v. *Sheikh Adam,* 39 Bom. 545=29 I.C. 949.

(6) *Shujauddin* v. *Must. Ashiabi,* 100 P.R. 1914.

(7) *Ugramdhan* v. *Lachmi Prasad,* 1923 Pat. 100=56 I.C. 422; also see *Ganapat Rao* v. *Lakshmi Bai,* 43 I.C. 64.

to the plaintiff to value the relief claimed in his suit to set aside an adoption, and that valuation is to be taken to determine the *forum* of the Court to decide the suit.[8] According to the ALLAHABAD High Court, the value for the purposes of jurisdiction of a suit to set aside an adoption is not the value of the property which may possibly change hands if the adoption be set aside, but the value put upon his plaint by the plaintiff.[9] Adoption is not necessarily inheritance or succession although it leads to inheritance or succession.[10] A suit for declaration that the adoption was invalid was valued for Court-fee and jurisdiction at Rs. 130, although the adoption affected property worth more than Rs. 5,000.[11] The MADRAS High Court held in *Keshava Sanabhaga* v. *Lakshminarayana*[12] that for the purpose of determining the jurisdiction over a suit by a reversioner to set aside an adoption, the loss which would accrue to the adopted should the adoption be declared invalid, is the measure of the value of the subject-matter of the suit. This dissents from the Allahabad view above.[13] A suit for a declaration as to the factum and validity of an adoption, is not in any sense a suit for possession of the property. The valuation of suits and appeals, under Ss. 12 and 13 of the Madras Civil Courts Act, means *market-value;* but an exception is provided in S. 14 of the same Act. Another exception is in S. 8 of the Suits Valuation Act. In these two cases valuation for jurisdiction and valuation for Court-fees are to be the same; in other cases the general principle that the valuation is to be based on market-value must apply.[14] As held by the Privy Council in *Rachappa* v. *Shidappa*, in a suit for a declaration of adoption, the test is not the notional value imposed by the Court-Fees Act, and the Suits Valuation Act, but the real value of the property.[15] A suit to set aside an adoption falling under Art. 17, cl. 5, of the Second Schedule, has a fixed fee for Court-fee purposes, and does not come within S. 8 of the Suits Valuation Act. In the PUNJAB such a suit is valued for jurisdictional purposes under the High Court Rules at a sum between Rs. 500 and Rs. 1,000.

35. **ATTACHMENT.**—The ALLAHABAD High Court has held that where a decree-holder sues for declaration that certain property attached in execution, which has been released from attachment on a successful objection, is liable to attachment and sale, the proper valuation of such suit for the purposes of jurisdiction is the amount of the decree under execution, and not the

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(8) *Prohlad Chander* v. *Dwarka Nath*, 6 I.C. 636=37 Cal. 860=14 C.W.N. 929.

(9) *Sheodeni Ram* v. *Tulshi Ram*, 15 All. 378=13 A.W.N. (1893) 147; also see, 28 All. 545=3 A.L.J. 266=A.W.N. (1906) 99.

(10) *Bai Machbai* v. *Bai Hirbai*, 10 I.C. 816=13 Bom.L.R. 251; also see, 6 I.C. 636 above.

(11) *Ibid.*

(12) 6 Mad. 192=7 Ind. Jur. 186.

(13) *Cf.* 15 All. 378 (379).

(14) *Vasireddi* v. *Veeramma*, 101 I.C. 379=1927 Mad. 563=50 Mad. 646=52 M.L.J. 381=25 M.L.W. 440.

(15) 50 I.C. 280=43 Bom. 507=46 I.A. 24 (P.C.).

value of the property attached.[16] A Full Bench of the PUNJAB CHIEF COURT[17] has laid down, that the proper valuation, for purposes of jurisdiction of a suit by an unsuccessful objector against the decree-holder and the judgment-debtor to declare the property not liable to attachment, *the judgment-debtor resisting the suit,* and claiming the property to be his, is the value of the property attached, and not the decretal amount. Johnstone, J., has classified the suits arising under O. 21, R. 63, C. P. Code, thus:—(*a*) by the decree-holder for a declaration that the property is liable to attachment; (*b*) by the objector against the decree-holder to declare the property not liable to attachment, the judgment-debtor siding with the objector, and not claiming the property to be his; (*c*) by the objector against the decree-holder, and the judgment-debtor, to declare the property not liable, the judgment-debtor resisting the suit, and claiming the property as his, and the plaint asserting that this is the judgment-debtor's attitude. Suppose in all these cases the decree amount is *less* than the value of the property. The rule to be followed is that in class (*a*), the subject-matter of the suit is the decretal amount[18]; in class (*b*), the subject-matter of the suit is also the decretal amount[19]; in class (*c*), the subject-matter of the suit is the value of the property attached, and not the decretal amount.[20] Thus, where the unsuccessful claimant sued for a declaration that the property was not liable to attachment as the property of the judgment-debtor, and the judgment-debtor was made a party but no distinct claim was made against him, the MADRAS Full Bench held that the suit was not a suit to obtain a declaration of title to the property, but one for getting rid of the effect of the order disallowing the claim, and ought to be valued at the amount for which the property was attached when such amount is *less* than the value of the property.[21] Similarly, if in a suit under O. 21, R. 63, the judgment-debtor is not a party to the suit, the decretal amount is the value of the suit for purposes of jurisdiction, where this is less than the value of the property.[22] In *Phul Kumari* v. *Ghanshyam Misra,* the suit by plaintiff, purchaser

(16) *Dhan Devi* v. *Zamurud Begam,* 27 All. 440.

(17) *Sherali Shah* v. *Lachmandas,* 94 P.R. 1908=212 P.L.R. 1908=74 P.W.R. 1908 (F.B.); *cf.* 142 P.R. 1906 and 55 P.R. 1906, where the judgment-debtor did not resist the claim.

(18) 94 P.R. 1908 (F.B.); 27 All. 440; 15 Cal. 104; also see *Anandi Kunwar* v. *Ram Niranjan Das,* 40 All. 505=16 A.L.J. 374=45 I.C. 494 =1918 All. 324 (Defendants held concerned only to the extent of the amount due under the decree).

(19) 94 P.R. 1908 (F.B.); 55 P.R. 1906; 142 P.R. 1906; 30 Mad. 335 (F.B.); 27 All. 440; 25 I.C. 180=145 P.W.R. 1914=253 P.L.R. 1914.

(20) 94 P.R. 1908 (F.B.); 17 All. 69=15 A.W.N. (1895) 3 (Property attached regarded as the subject-matter of suit by a claimant-objector, against decree-holder and the judgment-debtor or his representative party). 41 P.R. 1913=17 I.C. 196; (Decree-holder and judgment-debtor made parties to suit, although judgment-debtor did not appear). 82 P.R. 1913=18 I.C. 820 (Suit by judgment-debtor's wife). Also see 1 L.L.J. 87 (suit against decree-holder and judgment-debtor for declaration that house is not liable to attachment and sale in execution).

(21) *Krishnasami Naidu* v. *Somasundaram,* 30 Mad. 335=17 M.L.J. 95=2 M.L.T. 116 (F.B.).

(22) *Bishnu* v. *Lal Singh,* 55 P.R. 1906.

of the property wrongly attached in execution of a decree, for a declaration and injunction restraining execution was held to fall under Art. 17 (*i*) for purposes of Court-fee, but their Lordships observed that the value of the action was not the sum in the execution decree. "The value of the action must mean the value to the plaintiff. . . . It is only if the execution debt is less than the value of the property that its amount affects the value of the suit."[23] Where the value of the decree exceeds the value of the property, the valuation of the suit is determined by the lower value of the property itself.[24] In this case, it would be immaterial if the amount of the decree is higher than the limit of Court's pecuniary jurisdiction.[25] In a suit for declaration that an attachment does not affect plaintiff's subsisting mortgage, the proper valuation is not the value of the property but the amount for which execution is sought[26]: but where there is a dispute between the mortgagor and mortgagee as to whether the plaintiff's mortgage had been discharged, the valuation of the suit for purposes of jurisdiction is not necessarily the amount of the execution debt.[27] In *Radha Kunwar* v. *Reoti Singh*,[28] where the mortgage decree which was sought to be satisfied was above Rs. 10,000, but the value of the property to the decree-holder, and to the judgment-debtor was below Rs. 2,000, their Lordships of the Privy Council held that the value of the subject-matter of appeal was below Rs. 10,000.

36. **AWARD.**—A SUIT TO SET ASIDE AN AWARD falls under Art. 17 (*iv*) of Sch. II of the Court-Fees Act, and does not come under S. 7 (*iv*) (*c*) of the Act. Therefore, no *ad valorem* Court-fee is payable with reference to an imaginary or a notional value as distinct from the real value. Section 8 of the Suits Valuation Act is not applicable to such suits, and the JURISDICTIONAL VALUE must be the amount or value of the subject-matter, *viz.*, the amount which the award directs a person to pay to the other party; or the actual value of the interest affected by the award, and involved in the suit.[29]

37. **CANCELLATION OF DOCUMENT.**—A suit for cancellation of documents involving a prayer for declaration of

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(23) 35 Cal. 202=12 C.W.N. 169=7 C.L.J. 36=3 I.A. 22=10 Bom. L.R. 1=2 M.L.T. 506=5 A.L.J. 10 (P.C.). Also see and *cf. Amir Nawab* v. *Wajda Begam*, 103 I.C. 818=1927 Pat. 289 (Suit by objector, for declaration that property is *wakf* and not attachable in execution, held to fall under Sch. II, Art. 17 for fixed Court-fee of Rs. 15, but to be valued at the market-value of subject-matter).

(24) 2 N.L.R. 87: also see, 9 All. 140 (where the property attached was below Rs. 1,000 in value, but the decree was for an amount beyond the Court's limit of pecuniary jurisdiction) and 1933 All. 249 (F.B.) (valuation of the suit in cases where the value of the property is greater than the amount of decree, is the amount of the decree).

(25) 9 All. 140, *supra.*

(26) *Madukuri* v. *Muvvala*, 54 I.C. 543=37 M.L.J. 611.

(27) Cf. *Fisher* v. *Arunachallam*, 19 M.L.J. 236=5 M.L.T. 70=2 I.C. 522.

(28) 35 I.C. 939=14 A. L. J. 1002=38 All. 488 (P.C.); Cited in *Anandi Kunwar* v. *Ram Niranjan Das*, 45 I.C. 494=16 A.L.J. 374.

(29) *Venkatachelam Pillai* v. *Srinivasa Aiyar*, 75 I.C. 115=1924 Mad. 84=1923 M.W.N. 747=18 M.L.W. 399.

its invalidity, and a consequential relief must be stamped *ad valorem* on paintiff's value of relief under S. 7 (*iv*) (*c*) of the Court-Fees Act, and under S. 8, Suits Valuation Act, the value for purposes of jurisdiction must follow and be the same as the value for purposes of Court-fee.[30] Where in execution of a money-decree for less than Rs. 100, the rights and interests of a judgment-debtor as mortgagor in a certain house were purchased by the decree-holder in auction-sale for Rs. 100, and the judgment-debtor's son sued for cancellation of the auction-sale of the house, valued at Rs. 100 for purposes of Court-fee, and for purposes of jurisdiction at Rs. 1,500, it was held by the Punjab Chief Court, that the suit did not come under S. 7 (*v*), (*vi*), (*ix*), or (*x*) (*d*) of the Court-Fees Act; consequently, by virtue of S. 8 of the Suits Valuation Act, the value for purposes of jurisdiction was to be the same as the valuation for purposes of Court-fee.[31] In a suit for cancellation of a bond for a certain amount of money, where the plaintiff alleged that it was executed under a wrong impression as to the amount, for which he was liable, it was held that the value of the subject-matter of the suit was the difference between the amount of the bond, principal and interest, as stated therein, and the amount for which the plaintiff alleged it was executed, *viz.*, the lower amount with less interest.[32]

38. **CANCELLATION OF A DECREE.**—In suits for setting aside a decree as fraudulent, which is *prima facie* binding on the plaintiff, as a party to the decree, or one deemed to be represented in the proceedings, involving a consequential relief within S. 7 (*iv*) (*c*) of the Act, the value for Court-fee will also be the value of the suit for purposes of jurisdiction.[33] In Madras, the statutory value of property affected by the decree is to be taken.[34] A suit for a declaration that the plaintiff is the owner of certain property and that he is not bound by an ejectment decree obtained against him by fraud, and for an injunction that the defendants shall not interfere with his possession, falls under S. 7 (*iv*) (*c*) of the Court-Fees Act, and as such the question of jurisdictional value is determined with reference to S. 8 of the Suits Valuation Act.[35] But, where plaintiff sues to set aside a decree on the ground that it is null and void, or that he was not bound by the same, being no party to the suit, the suit is merely for a declaratory decree

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(30) *Param* v. *Achal*, 4 All. 289; *Samiya Mavali* v. *Minammal*, 23 Mad. 490 (valuation given by plaintiff accepted in appeal); *Chinnammal* v. *Madarsa Rowther*, 27 Mad. 480=14 M.L.J. 343; *Krishna Mallar* v. *Secretary of State*, 25 I.C. 375=1914 M.W.N. 767=16 M.L.T. 516 (suit for cancellation of a bond, involving a consequential relief, or return of bond).

(31) *Radha Ram* v. *Hira*, 42 P.R. 1901.

(32) *Kali Charn* v. *Ajudhia Rai*, 2 All. 148.

(33) 102 I.C. 46=1927 Lah. 499=8 Lah. 531; 1929 Lah. 463=116 I.C. 895; 1932 Lah. 132=135 I.C. 499=13 Lah. 391=32 P.L.R. 729; 1933 Lah. 246; also see 28 I.C. 79=38 Mad. 922 (F.B.); 1933 Nag. 214; 56 I.C. 360; 56 I.C. 550 and 21 I.C. 404=40 Cal. 615.

(34) 105 I.C. 171=1927 Mad. 825=53 M.L.J. 267=26 M.L.T. 159 =39 M.L.T. 193.

(35) *Nandan Mal* v. *Salig Ram*, 66 I.C. 34=1922 Lah. 236.

without consequential relief, and the jurisdictional value of such a suit is the value of the property.[36]

39. DECLARATORY SUITS.—This has already been dealt with in the notes under S. 4, of the Suits Valuation Act. *See also* the comments under S. 7 (*iv*) (*c*) of the Court-Fees Act.

40. DECLARATION AND INJUNCTION.—A suit for declaration and injunction comes under S. 7 (*iv*) (*c*), and plaintiff has to value the relief for purposes of *ad valorem* Court-fee. He cannot put a higher value for jurisdiction, and a lesser value for Court-fee.[37] A suit for declaration of title to exclusive management of *Devasthan* property, containing a prayer for injunction would also come under S. 7 (*iv*) (*c*) of the Act.[38] Similarly suits for possession of money-bond, and injunction restraining withdrawal of money;[39] or, a suit for declaration of title to share in certain *Talukdari* estates with an injunction restraining the cutting and removal of forest timber;[40] also, a suit for declaration of right to ownership of gadi, with injunction restraining occupation of gadi by any other person[41] have been held to fall within S. 7 (*iv*) (*c*) of the Act. A suit for declaration and injunction with respect to land must have identical values for Court-fee and jurisdiction, though this value depends on the option of the plaintiff.[42] A suit for declaration of title to jungle lands, with claim for damages, and injunction restraining the cutting of trees, has to be valued by plaintiff at same figure for Court-fee and jurisdiction.[43] Similarly a suit for declaration of right to *shamilat,* and injunction restraining interference falls under S. 7 (*iv*) (*c*) of the Act, and plaintiff is to put his own valuation on the relief.[44] A suit to set aside a compromise decree and alternatively for declaration of *waqf* property and injunction, held to come under S. 7 (*iv*) (*c*) of the Act, and the Court-fee value would govern the value for jurisdictional purposes.[45] Similarly, a suit by owner of shop, by inheritance, against tenant in possession, for declaration of right and injunction prohibiting defendant from interference;[46] and a suit for declaration that plaintiffs are lessees for a specified period and injunc-

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(36) *Sukhdial* v. *Durga Das,* 113 I.C. 908=1929 Lah. 446; also see *Shrimant Sagajirao* v. *Smith,* 20 Bom. 737.

(37) 24 I.C. 679=36 All. 500; 47 All. 501=1925 All. 602=87 I.C. 190=23 A.L.J. 344; 79 I.C. 358=46 All. 419=22 A.L.J. 349 (*ad valorem* Court-fee on value of both reliefs).

(38) 10 Bom. 60; also see 17 I.C. 162=40 Cal. 245 (suit for declaration of sole shebaitship.

(39) 1894 B.P.J. 145.

(40) 18 Bom. 100.

(41) 28 Bom. 567.

(42) 33 Bom. 307=1 I.C. 108; 34 Bom. 267=5 I.C. 867; also see 44 Bom. 331=22 Bom.L.R. 289=56 I.C. 340.

(43) 32 Cal. 734=9 C.W.N. 690; 62 I.C. 685; also see 46 I.C. 884.

(44) Also see 13 I.C. 408=52 P.W.R. 1912=111 P.R. 1913=22 I.C. 503 (F.B.); 9 Lah. 366=1927 Lah. 890.

(45) 9 Lah. 366=1927 Lah. 890; *cf.* 133 I.C. 120=1931 Lah. 307.

(46) 1932 Lah. 97=135 I.C. 502.

tion restraining interference will fall under S. 7 (*iv*) (*c*), the value of which could not be controlled by Court.[47]

41. **INJUNCTION.**—A suit for an injunction comes within S. 7 (*iv*) (*d*) of the Court-Fees Act, and in such a case it is wholly unnecessary for the plaintiff to fix any value for purposes of jurisdiction as, by S. 8 of the Suits Valuation Act, the value for purposes of Court-fee is also the value for purposes of jurisdiction.[48] The value for jurisdiction if given at a higher figure is to be ignored.[49] The CALCUTTA view is that the plaintiff in a suit for injunction is not bound to value the suit as for possession;[50] and a proper value given by plaintiff is accepted, but plaintiff cannot give a lower value for Court-fee, and a higher value for jurisdiction.[1] The LAHORE High Court,[2] and NAGPUR Judicial Commissioner's Court,[3] have held that the plaintiff is entitled to value the relief by way of injunction at any figure he likes, and the value of the relief so stated regulates the value for jurisdiction also. This valuation, however, is not conclusive of the value of the suit for the purposes of appeal to Privy Council.[4]

42. **LANDLORD AND TENANT.**—A suit for declaration of occupancy rights and for possession thereof, is to be valued at the value of the interest claimed by the plaintiff, not that of the entire interest in the land.[5] In a suit for recovery of immoveable property from a tenant the valuation for Court-fees is the same as that for jurisdiction.[6] A suit for ejectment of tenants, falling under S. 7 (*xi*) (*cc*) of the Act, now are governed by S. 8 of the Suits Valuation Act, as the Amending Act VI of 1905, repeals by implication the provisions of S. 14 of the Madras Civil Courts Act.[7] S. 14, Madras Civil Courts Act, does not prevail where it comes in conflict with S. 8, Suits Valuation Act.[8] The valuation therefore, for purposes of jurisdiction of a suit to recover possession of land from a tenant is not its market-value under S. 14 of the

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(47) 140 I.C. 73=33 P.L.R. 458.

(48) *Govinda Krishna* v. *Hannaya Lingaya,* 59 I.C. 777=45 Bom. 567 =1921 Bom. 65; see also 79 I.C. 358=46 All. 419; 47 All. 501=1925 All. 602 and 92 I. C. 730=1926 Mad. 591. *Cf.* 94 I. C. 951=48 All. 412=1926 All. 423 (value for jurisdiction given deliberately to bring the suit in a higher Court also taken to regulate Court-fee).

(49) 18 Bom. 207; also see 43 Bom. 376 (P.C.).

(50) 21 I.C. 771=19 C.L.J. 15.

(1) 79 I.C. 982=1924 Cal. 969=40 C.L.J. 150; 17 I.C. 162=40 Cal. 245; *cf.* 11 C.W.N. 705=6 C.L.J. 417 (power of Court to revise an unreasonable valuation); also compare 94 I.C. 103=1926 Pat. 334 (reasonable valuation not interfered).

(2) 69 I.C. 577=1924 Lah. 364; 111 P.R. 1913 (F.B.); 116 I.C. 908=1929 Lah. 566; 116 I.C. 547=1929 Lah. 556=11 Lah. 38.

(3) 99 I.C. 868=1927 Nag. 375.

(4) 31 Cal. 301; also see 6 I.C. 792=14 C.W.N. 872 and 1 I.A. 317 =18 W.R. 494; *cf.* 1 I.A. 84.

(5) 23 I.C. 964 (Cal.).

(6) 38 Mad. 795=24 I.C. 374.

(7) 39 Mad. 873=31 I.C. 104; also see 24 I.C. 374=26 M.L.J. 573.

(8) 1933 Mad. 721.

Madras Civil Courts Act, or S. 7 (*v*) (*d*) of the Court-Fees Act, but one year's rental payable by the tenant, for the year next before the date of presenting the plaint under S. 7, cl. (*xi*) (*cc*) of the Court-Fees Act.[9] A suit for enhancement of rent must have the same value for Court-fees and jurisdiction.[10] A suit for recovery of arrears of rent and injunction falls under S. 7 (*iv*) (*i*) of the Act, and the value for Court-fee also determines value for jurisdiction.[11]

43. MONEY SUITS.—The Court-fee and jurisdictional value are the same in suits for moneys. The plaint determines the *forum*, and in order to determine the proper appellate Court, the value of the original suit as assigned by the plaintiff in his plaint must be taken.[12] However, the value of an appeal is not in all cases the value of the suit as originally filed, but the value of the relief granted by the decree which a party wishes to get rid of.[13] In a suit to establish the validity of a charge upon property, the valuation for which is in most respects the same as that for Court-fee, it was held by the Madras High Court, that when the property is in excess of the charge, the value of the subject-matter is the amount of the charge and when the charge is in excess of the property, then the value of the property.[14] Where the value of the suit as instituted by the plaintiff, and the value of the set-off claimed by the defendant taken separately are within the pecuniary jurisdiction of a Court, the value of the suit is not the aggregate of these two values, and the Court can adjudicate upon both cases.[15] When the set-off claimed by defendant exceeds the jurisdiction of Court, the Court cannot adjudicate upon the matter.[16]

44. MAINTENANCE.—The value of a suit falling under cl. (*ii*) of S. 7 is ten times the amount payable for one year. This principle was applied to a declaratory suit as to ownership of annuity, where consequential relief is involved, and plaintiff is desired to put his own fair valuation.[17] But in suits falling under S. 7 (*iv*) (*c*) of the Act, where the plaintiff claims to be owner of certain annuity, and sues to recover the same, the plaintiff can value the suit arbitrarily for purposes of Court-fees, and this valuation also determines jurisdiction under S. 8 of the Suits Valuation Act.[18] The value of suit to recover annuity for purposes of appeal to Privy Council is the annuity sought to be recovered and not the value of the property upon which it is charged.[19] The

(9) *Ibid.*, and 87 P.R. 1910; 25 I.C. 975=12 A.L.J. 933.
(10) 8 P.L.T. 475.
(11) 17 I.C. 44=6 Sind L.R. 115.
(12) 86 I.C. 1055=47 All. 534=1925 All. 376.
(13) 85 I.C. 405=48 Mad. 652=1925 Mad. 323; *cf.* 1931 Mad. 710.
(14) 4 Mad. 339; 10 Mad. 187; 30 Mad. 96; relied in 1931 Mad. 710 =135 I.C. 11.
(15) 69 P.R. 1889; also see and *cf.* 17 P.R. 1890.
(16) 84 I.C. 971=2 Rang. 462=1925 Rang. 65.
(17) 71 I.C. 31 (32)=1922 Nag. 264.
(18) 87 I.C. 801=1925 Bom. 282; 100 I.C. 913=6 Pat. 17=1927 Pat. 123.
(19) 75 I.C. 502=1923 P.C. 102 (P.C.).

jurisdictional value of suit, as originally brought, fixes the jurisdiction throughout subsequent stages of the suit.[20]

45. **MOVEABLE PROPERTY.**—A suit under S. 7 (*iii*) to recover moveable property has the same value for Court-fees and jurisdiction. It is usually in form of an alternative relief for money-suit failing delivery by defendants of documents in suit.

46. **PARTITION.**—Where plaintiff coparcener, out of possession sues for joint possession, or joint enjoyment of joint family property, the suit falls under S. 7 (*iv*) (*b*) for purposes of Court-fee, and the valuation of the suit, which determines jurisdiction is therefore optional with plaintiff.[21] Where the suit is, in essence for a declaration of title, and recovery of possession, under the guise of a suit for partition, and plaintiff is not in possession, actual or constructive, the suit falls under S. 7, cl. (*v*) of the Court-Fees Act, being a title suit to recover possession of property.[22] In a suit for partition, and separation of joint family property, the market-value of plaintiff's share in property is taken as the jurisdictional value of suit.[23]

47. **REGISTRATION OF DOCUMENTS.**—A suit for compulsory registration of documents under S. 77 of the Registration Act does not fall for purposes of Court-fees under S. 7 (*iv*) (*c*) of the Act, but under Art. 17 (6) of Sch. II of the Act, as it is not possible to estimate at a money-value the subject-matter in dispute. The question of valuation for purposes of jurisdiction is not in such cases to be decided under S. 8 of the Suits Valuation Act. The value in such cases will be the value of the interest created by such document.[24] The Calcutta High Court has held that where the suit is not with regard to any land or interest in land to be conveyed by the document, but the suit is merely for the registration of a conveyance, the plaintiff is entitled to put his own valuation on the suit.[25]

48. **RESTITUTION OF CONJUGAL RIGHTS.**—In suits for restitution of conjugal rights, the plaintiff's valuation for Court-fee determines valuation of suit for purposes of jurisdiction.[26] But in the Punjab this value cannot exceed Rs. 1,000. (*See* Appendix.) *Also see* comments under S. 9, *post*.

49. **SPECIFIC PERFORMANCE.**—In suits falling under S. 7 (*x*) (*c*) of the Court-Fees Act, *e.g.*, in a suit for specific performance of a contract to grant a lease, the proper procedure

(20) 106 I.C. 616=50 Mad. 857=1927 Mad. 977 (F.B.); also 7 M.H. C.R. 356.

(21) 33 Bom. 658=4 I.C. 243; 22 Bom. 315; 104 P.R. 1895; 28 P.R. 1903; 1932 Lah. 421; 13 I.C. 903=1912 M.W.N. 199; 21 Mad. 234; 1924 Nag. 86=81 I.C. 766 and 101 I.C. 770=1927 Nag. 248; but *cf.* 8 I.C. 512=21 M.L.J. 21 (F.B.) (S. 7, cl. (5) applied).

(22) See comments under S. 7 (4) (*b*), Court-Fees Act.

(23) 33 Bom. 658=11 Bom.L.R. 1074; 19 Mad. 56.

(24) 31 Mad. 89=17 M.L.J. 573 (F.B.).

(25) 1926 Cal. 1091=30 C.W.N. 951=53 Cal. 1023=97 I.C. 762.

(26) 34 Cal. 352; 28 All. 545; 31 Cal. 849.

is to value the suit first for payment of Court-fee, and then this valuation for assessment of Court-fees will control the valuation for purposes of jurisdiction, which should be the same as the valuation for Court-fee.[27] In a suit for specific performance of contract of sale, the amount of consideration determines the value both for purposes of Court-fees and jurisdiction.[28]

50. TRUSTEES.—A suit for the removal of managers of a temple from office under Ss. 14 and 18 of the Religious Endowments Act, 1863 is not capable of valuation, and the Court-fee payable is a fixed fee: but for jurisdictional purposes, the plaintiff may put some value, which if reasonable and *bona fide* will be accepted by the Court.[29] In a suit for removal of a trustee, the value of suit for jurisdictional purposes must be the value of the trust property affected.[30]

Determination of value of certain suits by High Court.

9. When the subject-matter of suits of any class, other than suits mentioned in the Court-Fees Act, 1870, Section 7, paragraphs (*v*) and (*vi*) and paragraph (*x*), clause (*d*) is such, that in the opinion of the High Court it does not admit of being satisfactorily valued, the High Court may, with the previous sanction of the Local Government, direct that suits of that class shall, for the purpose of the Court-Fees Act, 1870, and of this Act and any other enactment for the time being in force, be treated as if their subject-matter were of such value as the High Court thinks fit to specify in this behalf.

COMMENTS.

51. RULES AND ORDERS.—Rules have been framed under this section by the Punjab Chief Court (now High Court, Lahore), High Court of Madras, and the Judicial Commissioners of Central Provinces, and Oudh.[31]

52. RULES HAVING FORCE OF LAW.—The rules as they stand have the force of law. Whether in the case of a particular class of suits the High Court and Local Government exercised

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(27) 66 I.C. 268=25 C.W.N. 768=34 C.L.J. 94=1921 Cal. 84.

(28) 77 I.C. 874=1923 Oudh 252.

(29) 11 Mad. 148; 11 Mad. 149 (Note).

(30) 8 Mad. 516; 20 M.L.J. 726; *cf.* 19 All. 60=16 A.W.N. 187.

(31) For Punjab Rules and Orders, *see* Vol. III. of High Court Rules and Orders, p. 90, No. 14; and the Madras High Court Rules are published in the *Fort St. George Gazette,* dated 3rd March, 1903, Part II, p. 368. For Oudh Rules see Notification No. 779, dated 18th June, 1819, and Notification No. 2464, dated 21st December, 1896, *N.-W. P. and Oudh Gazette,* dated 4th January, 1899, Part II, p. 2, etc. For the Central Provinces Rules, see Notification No. 3240, dated 28th June, 1888, *Central Provinces Gazette,* Part I, p. 140.

their discretion wisely in fixing the fee are questions beyond the jurisdiction of the Courts.[32] Section 9 of the Suits Valuation Act cannot reasonably be read as conferring any power of valuation in respect of suits for which the Court-Fees Act prescribes a fixed fee without any sort of reference to the possibility of estimating value.[33] The Court-fee of Rs. 10 fixed for suits falling under Art. 17 was an arbitrary fee fixed for convenience and S. 9 of the Suits Valuation Act enacted that this fee fixed on an arbitrary valuation should be regarded as provisional, and liable to be supplanted on a reasonable basis of valuation under Rules.[34] This section provides *inter alia* that it is competent to the High Court with the previous sanction of the Local Government to frame rules for the valuation of suits referred to in paragraph (*iv*) of S. 7 of the Court-Fees Act and for determining the jurisdiction of Courts, but until such rules have been framed, the valuation given by the plaintiff cannot be revised.[35] But, it was observed in the case of *Varadaraja Mudaliar* v. *Arumugam Pillai*[36] that the High Court has framed no rules in respect of suits transferred under the extraordinary original jurisdiction of the Court conferred either by S. 13 of the Letters Patent, or S. 24 of the Civil Procedure Code. In such cases in the absence of any rules framed by the Court, the Court-Fees Act would apply and the fees payable are the fees prescribed in the First and Second Schedules to the Act.[37] The Nagpur Judicial Commissioner's Court has held in *Harihar Rao* v. *Salu Bai*[38] that under the rules made by the Court and published in Civil Circular II. 8, a suit for a declaration that an adoption is valid or invalid should be valued at Rs. 400, unless it affects a title to any property exceeding Rs. 400 in value, in which case the market-value of the property should be deemed to be the value of the subject-matter of the suit, and the suit should be valued for the purpose of Court-fee and jurisdiction accordingly. The proviso to the Circular fixing the value of the suit at the value of the property, the title to which is affected by it, is anomalous but has to be followed.[39] The value prescribed in R. 1, is prescribed both for purposes of Court-fee and jurisdiction. Where a person seeks a declaration that he is the adopted son of the defendant, and the suit is valued at the value of the share of the defendant in coparcenary property, the case falls under the proviso to R. 1, and *ad valorem* Court-fee is paid on the value estimated.[40] The PUNJAB CHIEF COURT holds that the rules issued under S. 9, Suits Valuation Act, as to valuation of suits, were not intended to have retrospective effect, so as to

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(32) *Ganpat Rao* v. *Laxmibai*, 43 I.C. 64 (67)=15 N.L.R. 24.
(33) *Ibid.*, 43 I.C. 64 (66).
(34) *Ibid.*
(35) *Chinnammal* v. *Madarsa Rowther*, 27 Mad. 480 (482).
(36) 1925 Mad. 1216=91 I.C. 751=22 M.L.W. 15.
(37) *Ibid.*
(38) 103 I.C. 268=1927 Nag. 256.
(39) *Ibid.*
(40) *Amdu* v. *Pessi*, 1930 Nag. 20.

affect jurisdiction with respect to an appeal in the suit *instituted* before the rule came into force.[41]

53. SCOPE, AND APPLICATION.—Rule No. 2 of the Rules of Madras High Court of the 26th February, 1903, has no application to declaratory suits where no consequential relief is prayed. In such suits the value for purposes of jurisdiction is the value of the property likely to be affected by the declaration.[42] Where no rules have been framed the Court-Fees Act would apply, and the fees payable are those prescribed in the schedules.[43]

54. RESTITUTION OF CONJUGAL RIGHTS.—A suit for RESTITUTION OF CONJUGAL RIGHTS is according to the practice of ALLAHABAD High Court not excluded from the jurisdiction of a Munsiff. The Legislature has recognised the existence of classes of suits the subject-matter of which does not admit of being satisfactorily valued, and has given power to the High Court, with the previous sanction of the Local Government to specify valuations for Court-fees and jurisdiction.[44] Until rules are framed, by the High Court, in the exercise of powers under S. 9, Suits Valuation Act, the plaintiff should be allowed to put his own valuation on such a suit, subject to the power of the Court to refuse to accept the valuation if in its opinion it is not *bona fide*.[45] The CALCUTTA High Court holds accordingly, that the plaintiff in a suit for restitution of conjugal rights is the proper person to value his suit; but if from improper motives he undervalues, or overvalues it, the Court must decide what should be the proper value.[46] Similarly, the Bombay High Court has held that in a suit for the restitution of conjugal rights the law leaves it to the plaintiff to put his own valuation on the plaint, and accepts it for the purposes of jurisdiction unless it is vitiated by some improper motive, such as deliberate design to give the Court a jurisdiction which it has not.[47] But, under the present section it is open to a High Court, in a case of this description to direct with the previous sanction of the Local Government, that the subject-value is to be valued in a specified manner.[48] In the PUNJAB, the rule framed by the High Court under the Suits Valuation Act provides that the value for the purpose of jurisdiction of a suit instituted by the plaintiff for a decree against the other party to the alleged marriage, either alone or with other defendants,

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(41) 31 P.R. 1909=3 I.C. 404, *Dhirta* v. *Kesari;* also see 12 P.R. 1900 (F.B.) (effect of amending Act on suits instituted before its enactment).

(42) *Sankaran Nair* v. *Gopala Menon,* 30 Mad. 18.

(43) *Varadaraja* v. *Arumugam,* 1925 Mad. 1216=91 I.C. 751=22 M.L.W. 15.

(44) *Zair Hussain Khan* v. *Khurshed Jan,* 28 All. 545=3 A.L.J. 266 =1906 A.W.N. 99 (F.B.).

(45) *Ibid.,* 28 All. 545=3 A.L.J. 266=1906 A.W.N. 99 (F.B.) (Diss. 31 Cal. 819).

(46) *Jan Mahomed Mandal* v. *Mashar Bibi,* 34 Cal. 352=5 C.L.J. 400 =11 C.W.N. 458.

(47) *Jasodha Chhotu* v. *Chhotu Mannu,* 11 Bom.L.R. 1352=4 I.C. 836.

(48) *Aklemannessa Bibi* v. *Mahomed Hatem,* 31 Cal. 849=8 C.W.N. 705 (709).

for restitution of conjugal rights, is Rs. 1,000. Where the suit was for restitution of conjugal rights, this rule was held to cover it although the suit contained a prayer for an injunction as ancillary and incidental to the main relief claimed, which did not affect the value of the suit for the purposes of jurisdiction.[49]

10. [*Repeal of S, 32, Punjab Courts Act, (XVIII) of 1884*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

PART III.

SUPPLEMENTAL PROVISIONS.

Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes.

11. (1) Notwithstanding anything in Section 578 of the Code of Civil Procedure [now S. 99 of Code of 1908] an objection that by reason of the over-valuation or under-valuation of a suit or appeal, a Court of first instance or lower appellate Court which had not jurisdiction with respect to the suit or appeal, exercised jurisdiction with respect thereto, shall not be entertained by an appellate Court unless—

(*a*) the objection was taken in the Court of first instance at or before the hearing and which issues were first framed and recorded, or, in the lower appellate Court, in the memorandum of appeal to that Court, or

(*b*) the appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over-valued or under-valued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(2) If the objection was taken in the manner mentioned in clause (*a*) of sub-section (1), but the Appellate Court is not satisfied as to both the matters mentioned in clause (*b*) of that sub-section, and has before it the materials necessary for the determination of the other ground of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of the first instance or Lower Appellate Court.

(3) If the objection was taken in that manner, and the Appellate Court is satisfied as to both those

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(49) *Nathu* v. *Chuhri*, 52 I.C. 101=20 P.L.R. 1919; citing *Mt. Bhani* v. *Bansi*, 33 I.C. 1002=28 P.W.R. 1916.

matters, and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeals; but, if it remands the suit or appeal, or frames and refers issues for trial or requires additional evidence to be taken, it shall direct its order to a Court competent to entertain the suit or appeal.

(4) The provisions of this section with respect to an Appellate Court shall so far as they can be made applicable, apply to a Court exercising revisional jurisdiction under Section 622 of the Code of Civil Procedure [Section 115 of the Code of 1908] or other enactment for the time being in force.

(5) This section extends to the whole of British India, and shall come into force on the first day of July, 1887.

55. **OBJECT OF THE SECTION.**—The object of the Legislature in enacting this provision was to ensure that the time and labour spent by a Court in deciding a case should not be wasted, if the party concerned has joined issue and gone to trial upon the merits without raising objection to the pecuniary jurisdiction of the Court at the earliest opportunity.[50] The object of the Legislature in this case, and in S. 21 of the C. P. Code of 1908 "is the same, namely, that the defect of jurisdiction on territorial or pecuniary ground should not render proceedings in a case abortive if such objection was not taken at the earliest opportunity, and there has been no consequent failure of justice.[1]" The object of S. 11 of Suits Valuation Act is to provide a machinery for curing the original lack of jurisdiction.[2] Pending proceedings are not excepted from the application of provisions of this section.[3]

56. **SCOPE AND APPLICATION.**—"The language of the section is comprehensive enough to include all cases of erroneous valuation, and does not suggest any distinction between cases in which the valuation depends upon rules having the force of law and those in which the valuation is determined otherwise."[4] "The general rule relating to jurisdiction is that neither consent nor

(50) *Sardar Khan* v. *Aisha Bibi*, 6 Lah. 105=88 I.C. 72=1925 Lah. 290 (F.B.)..

(1) *Ibid.*; 6 Lah. 105=88 I.C. 72=1925 Lah. 290 (F.B.); also see 1928 Lah. 825=107 I.C. 620=9 Lah. 418.

(2) Per *Coutts-Trotter, J.*, in 73 I.C. 87=45 M.L.J. 135=18 M.L.W. 1 =1923 M.W.N. 489=46 Mad. 631 (F.B.).

(3) 2 C.P.L.R. 18.

(4) *Sardar Khan* v. *Mt. Aisha Bibi*, 6 Lah. 105=1925 Lah. 290=88 I.C. 72 (F.B.) (O.R. *Ganga Sahai* v. *Sheo Lal*, 132 P.R. 1894; also see Punjab cases to same effect, 35 P.R. 1901; 21 P.R. 1918=44 I.C. 816; 2 P.R. 1915=28 I.C. 113; 8 I.C. 1043; 56 I.C. 918; 29 I.C. 796=116 P.L.R. 1915).

waiver by a party to the suit can confer jurisdiction upon a Court which has no inherent jurisdiction; and that jurisdiction over the subject-matter of a suit can be given only by law . . . Section 11 of Suits Valuation Act, however, provides an exception to the general rule and lays down that a party who has not taken objection as to the pecuniary jurisdiction of the Court at the time specified in cl. (*a*) cannot be allowed to dispute that jurisdiction afterwards."[5] Section 11 of the Suits Valuation Act contemplates a decree already passed, and no objection taken to its jurisdiction.[6]

Section 11, Suits Valuation Act, provides that where objection to the jurisdiction has been taken on the score of over or under-valuation in the Court of first instance, it shall receive effect, only if the appellate Court is satisfied that "the over-valuation or under-valuation has prejudicially affected the disposal of the suit on the merits."[7]

The expression "*Court of first instance*" referred to in sub-section (1) (*a*) of S. 11 must mean not the Court in which the suit ought to have been started, but the Court in which it was, in fact, started. And it follows that the "*Appellate Court*" means not the Court in which the appeal should have been started in the first instance, but the Court to which it, did in fact go, and ought to have gone if the lack of jurisdiction were to be condoned.[8]

57. **ERRONEOUS VALUATION.**—The words of the section are general and refer to over-valuation and under-valuation regardless of how the same arises[9]; and whether it is a mistake in estimate of value, or principle. Section 11 of the Suits Valuation Act covers also an erroneous valuation under a mistake of law.[10-11] The phrase "over-valuation or under-valuation" is intended to include all cases of erroneous valuation.[12] The PUNJAB CHIEF COURT had taken the view in several cases that the section does not apply where the valuation was fixed by the rules having the force of law, but covered only those cases where the valuation was in the discretion of the parties.[13] This view has now been reversed

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(5) *Ibid.;* 6 Lah. 105=1925 Lah. 290=88 I.C. 72 (F.B.).

(6) *Amir Chand* v. *Buti Shah,* 1930 Lah. 195=125 I.C. 334.

(7) *Naduvil Karnavan* v. *Cheriya Parvathi,* 73 I.C. 87=46 Mad. 631 =18 M.L.W. 1=45 M.L.J. 135=1923 M.W.N. 489 (F.B.); also see II, 59, below.

(8) Per *Coutts-Trotter, J.,* in 73 I.C. 87 (F.B.), *supra.*

(9) *Govinda Menon* v. *Karunkara,* 24 Mad. 43; also see *Krishnasami* v. *Kanakasabai,* 14 Mad. 183; *Raghavachariar* v. *Raghavachariar,* 41 I.C. 167 and *Ammalu Ammal* v. *Krishnan Nair,* 2 I.C. 715=30 M.L.T. 38. *Cf.* 29 I.C. 796=116 P.L.R. 1915=229 P.W.R. 1915; not followed in 52 I.C. 992.

(10-11) *Nana* v. *Mulchand,* 21 I.C. 918=9 N.L.R. 161; also see *Balkrishna* v. *Jankibai,* 56 I.C. 340=44 Bom. 331=22 Bom.L.R. 289.

(12) *Aklemannessa* v. *Mahomed Hatem,* 31 Cal. 849 (856)=8 C.W.N. 705.

(13) *Ganga Sahai* v. *Sheo Lal,* 132 P.R. 1894; *Khuda Yar* v. *Wahabdin,* 35 P.R. 1901; *Sukhraj* v. *Kanhayalal,* 28 I.C. 113=2 P.R. 1915; *Cheloo* v. *Kalidas,* 21 P.R. 1918=44 I.C. 816; *Sanga* v. *Mali,* 8 I.C. 1043; *Moha-*

by a FULL BENCH OF THE LAHORE HIGH COURT, and the earlier cases are no longer good law on the point.[14]

An erroneous assumption of jurisdiction through overvaluation does not by itself vitiate the proceedings.[15] Over-valuation alone is not sufficient to dismiss suit by appellate Court, unless over-valuation has prejudicially affected disposal of suit on merits.[16]

The provisions of S. 11 of the Suits Valuation Act apply even if the plaintiff designedly exaggerates or under-states the value of his claim for the purposes of choosing his own forum.[17] It is no doubt a sound rule that Courts should not allow parties to evade the law relating to matters of jurisdiction, and that, where it is found that a party has intentionally exaggerated his claim in order to bring his suit in a Court which otherwise would not have jurisdiction to try it, before the merits of the claim have been gone into, the plaint should be returned to be presented to the proper Court. But, this rule must be taken with qualifications; and one important qualification is that embodied in S. 11 of the Suits Valuation Act, which is this, namely, that where the suit has been tried on its merits by the first Court, and the over-valuation or under-valuation of the suit is not found by the appellate Court to have prejudicially affected the disposal of the suit on the merits, there the objection as to jurisdiction should not be given effect to."[18] Similarly in cases of deliberate or mistaken under-valuation,[19] where no prejudice has resulted, the proceedings were held not open to objection on ground of want of jurisdiction[20]; and the appellate Court is restrained from ordering the reversal of a decrée on such account.[21]

58. **OBJECTION TO JURISDICTION.**—Where an objection to the pecuniary jurisdiction of the lower appellate Court based on the valuation of the suit is not raised before that Court and the jurisdiction of that Court is accepted, the objection cannot be raised for the first time before the High Court.[22] In *Kishanlal* v. *Rupchand* it was held that objection as to pecuniary jurisdiction cannot be entertained in second appeal.[23] "It is clearly the policy of

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mad Shah v. *Abdulla Shah*, 56 I.C. 918; *Ghulam Akbar* v. *Barkat Bibi*, 29 I.C. 796=116 P.L.R. 1915=229 P.W.R. 1915.

(14) *Sardar Khan* v. *Mt. Aisha Bibi*, 6 Lah. 105=88 I.C. 72=1925 Lah. 290 (F.B.).

(15) *Krishnasami* v. *Savoy Vijia Raghunatha*, 1 M.L.J. 234.

(16) 129 I.C. 378=1930 All. 869.

(17) *Muhammad Sharafat Ullah* v. *Hira Lal*, 21 I.C. 52=16 O.C. 257.

(18) *Hamidunnessa* v. *Gopal Chandra*, 24 Cal. 661=1 C.W.N. 556.

(19) *Mewah Lal* v. *Behary Lal*, 14 W.R. 195; *Ango Pura* v. *Meah Bibee*, 10 W.R. 207; *Muzhur Ali* v. *Mt. Basoo*, 8 W.R. 46; *Brojo Coomar* v. *Ishan Chander*, 3 C.L.R. 1.

(20) *Ram* v. *Taja*, 173 P.L.R. 1903=74 P.R. 1903.

(21) *Kishenlal* v. *Rupchand*, 9 All.W.N. 169; also see *Guddadhar* v. *Premomoyee*, 10 W.R. 286; *Ram Gutty* v. *Goonamonee*, 11 W.R. 177.

(22) *Boukai Sahu* v. *Mosaheb Ali*, 46 I.C. 892; 2 C.P.L.R. 18; also see 1929 Lah. 509 (2).

(23) A.W.N. (1889) 169; also see *Kesho Prasad Singh* v. *Lakhu Rai*, 75 I.C. 305=1923 Pat. 581=4 P.L.T. 525, and 100 I.C. 166=1927 Lah. 860 (objection to jurisdiction on ground of undervaluation not allowed to be raised for first time in second appeal).

the law that when any question of jurisdiction is raised, it should be raised in the Court of first instance at the earliest stage, and that it should be given effect to by the appellate Court only if there has been prejudice caused by the trial in the first Court."[24] Accordingly, where after remand on second appeal the District Judge reheard the appeal and affirmed the decree of the Court of first instance, and the question of proper valuation of suit was raised on second appeal, it was held that the suit was not instituted in the Court of lowest grade competent to try it, in contravention of S. 15 of the C. P. Code; but S. 11 of the Suits Valuation Act afforded the plaintiff adequate protection.[25] Where a defendant objects to the valuation of a suit, such objection can, under S. 11 of the Suits Valuation Act, be heard even at the time of the hearing of an appeal, if it was taken in the Court of first instance at or before the first hearing.[26] Where the defendant did not object to the under-valuation in the trial Court or the lower appellate Court, it was held by the PATNA High Court, that in the absence of any such objection, and of anything to show that the under-valuation had prejudicially affected the disposal of the appeal on the merits, the defendants' objection could not be entertained in second appeal.[27]

59. PREJUDICIAL DISPOSAL OF SUIT ON THE MERITS.—Objection to jurisdiction will not be entertained by the appellate Court unless the erroneous valuation has prejudicially affected the disposal of the suit on the merits.[28] The policy of the law is that in cases of over-valuation or under-valuation the appellate Court should not interfere unless the disposal of the suit has been prejudicially affected.[29] Similarly, it has been held by the RANGOON High Court, that under S. 11, cl. (2) of the Suits Valuation Act, even if objection to the jurisdiction was taken at an early stage in the trial Court, the appellate Court is required to dispose of the appeal, as if there had been no defect of jurisdiction unless

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(24) *Aduri Chelmayya* v. *Lakshmi Devamma*, 79 I.C. 857=1925 Mad. 171; also see *Budhamal* v. *Rallia Ram*, 107 I.C. 620=9 Lah. 418=1928 Lah. 825 (*Held*, that the defect of pecuniary or territorial jurisdiction should not render proceedings in a case abortive, if such objection was not taken at the earliest opportunity, and there has been no consequent failure of justice); and see *Ammalu Ammal* v. *Krishnan Nair*, 62 I.C. 715 (Mad.).

(25) *Sailendra Nath* v. *Ram Charan*, 66 I.C. 268=1921 Cal. 84=34 C.L.J. 94=25 C.W.N. 768.

(26) *Kamta Siroman Prasad Singh* v. *Gayadin Pathak*, 69 I.C. 201 =1922 Oudh 249 (2)=25 O.C. 184.

(27) *Kesho Prasad Singh* v. *Lakhu Rai*, 75 I.C. 305=4 P.L.T. 525 =1923 Pat. 581.

(28) *Moolchand Moti Lal* v. *Ramkishan*, 1933 All. 249 (F.B.); also *Vedaji Baskara* v. *Subramania Gurukkal*, 52 I.C. 992; *Ammalu* v. *Krishnan Nair*, 62 I.C. 715; also see *Naduvil Karnavan* v. *Cheriya Parvathi*, 73 I.C. 87=46 Mad. 631=45 M.L.J. 135 (F.B.), etc., and *Musa Imran* v. *Bhagwan Das*, 100 I.C. 546=1927 All. 359 and *Aduri Chelmayya* v. *Aduri Lakshmi*, 79 I.C. 857=1925 Mad. 171 (policy of law that objection to jurisdiction should be raised at earliest stage, and to be given effect to only in case of prejudice to decision on merits).

(29) *Govinda Menon* v. *Karunakara*, 24 Mad. 43; *Aduri Chelmayya* v. *Aduri Lakshmi*, 79 I.C. 857=1925 Mad. 171; also see *Raghava Chariar* v. *Raghava Chariar*, 41 I.C. 167.

it is satisfied that the over-valuation or under-valuation has prejudicially affected the disposal of the suit or appeal on its merits.[30]

The LAHORE High Court has held that where an inferior Court disposes of an appeal which should have been heard by a superior Court, there is ground for holding that the parties have been prejudiced.[31] But the Full Bench of the MADRAS High Court has held that S. 11 of the Suits Valuation Act when referring to an under-valuation or over-valuation "prejudicially affecting the disposal of a suit or appeal on its merits," is not considering at all the different rules of procedure that there may be an appeal from one Court to another. The mere fact of under-valuation of a suit by the plaintiff involving a trial by a District Munsiff instead of by a Sub-Judge's Court cannot be deemed to be "*prejudice*" within the meaning of S. 11 of the Suits Valuation Act to the unsuccessful party on account of the party being restricted to a right of second appeal to the High Court on questions of law only instead of a regular appeal on questions of fact also.[32]

60. **REASONS IN WRITING.**—The ALLAHABAD High Court has held that S. 11 of the Suits Valuation Act prohibits an appellate Court from entertaining an objection as to jurisdiction unless it was taken in the Court of first instance, at or before the date on which issues were framed or the appellate Court is satisfied, for reasons to be recorded in writing, that the suit was under-valued, and that the under-valuation thereof has prejudicially affected the disposal of the suit on the merits.[33] The appellate Court is only required to record reasons, if it holds that the suit was over-valued or under-valued, and that the over or under-valuation has prejudicially affected the disposal of the suit, but it is not required to record reasons in writing for holding that the under-valuation had *not* prejudicially affected the disposal of the suit.[34]

61. **CHANGE OF FORUM.**—The mere change of forum, consequent on the under-valuation, cannot of itself be treated as prejudicially affecting the disposal of the suit on the merits within the meaning of the section.[35] But, it is difficult to hold that the

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(30) *V. S. Aiyar* v. *Maung Nyun,* 1929 Rang. 228.

(31) *Bani* v. *Mangu,* 114 I.C. 440; follows *Cheloo* v. *Kalidas,* 21 P.R. 1918=44 I.C. 816; also see *Mathradas Puri* v. *Jalaldin,* 1933 Lah. 8; *Rukmindas* v. *Devasingh,* 96 I.C. 242=1926 Pat. 351=5 Pat. 505 and *Budhamal* v. *Rallia Ram,* 1928 Lah. 825=9 Lah. 418=107 I.C. 620 (The defect of jurisdiction on pecuniary ground not to render proceedings abortive if such objection was not raised at earliest opportunity, and there has been no consequent failure of injustice).

(33) Per *Schwabe, C.J.,* in 73 I.C. 87=46 Mad. 631=45 M.L.J. 135 =18 M.L.W. 1 (F.B.).

(33) *Musa Imran* v. *Bhagwan Das,* 100 I.C. 546=1927 All. 359; also see *Hamidunnissa* v. *Gopal Chandra,* 24 Cal. 661=1 C.W.N. 556.

(34) 100 I.C. 546=1927 All. 359, *supra.*

(35) *Narayani Ammal* v. *Secretary of State,* 41 I.C. 167; *Musa Imran* v. *Bhagwan Das,* 100 I.C. 546=1927 All. 359; also see 21 I.C. 918 (Nag.); *Naduvil Karnavan* v. *Cheriya Parvathi,* 73 I.C. 87=46 Mad. 631=45 M.L.J. 135 (F.B.) and 8 I.C. 545=20 M.L.J. 726.

Legislature intended to give a plaintiff the right to sue in whatever *forum* he might choose, and thereby take away the right of appeal on facts to the High Court. This was the view taken by Devadoss, J., in the Madras Full Bench case in *Naduvil Karnavan* v. *Cheriya Parvathi*[36]; and the Patna High Court takes a similar view[37]; however, the Full Bench of MADRAS High Court holds that the mere fact that a party was deprived of the right of appeal on facts before the High Court cannot be held to prejudicially affect the disposal of the appeal on the merits within the terms of S. 11 of the Suits Valuation Act.[38] The CALCUTTA High Court observes that there is nothing in the language of S. 11 of the Suits Valuation Act to indicate that it is limited in its operation to those cases where the change of jurisdiction is from a higher to a lower Court of the same class, that is, from a Subordinate Judge's Court to a Munsiff's Court, or *vice versa*, and not where it is from a Court of exclusive jurisdiction, like a Court of Small Causes to that of a Munsiff.[39] Reading S. 11 of the Suits Valuation Act with S. 99, C. P. Code (old S. 578, Code of 1882), the words "prejudicially affected the disposal of suit on the merits" must be construed in the same way as they would be construed with reference to any error, defect or irregularity contemplated by the section.[40]

For the purposes of sub-S. (*b*) of S. 11 of the Suits Valuation Act, it must be decided on the circumstances of each case whether the change of *forum* owing to over-valuation or under-valuation has affected the disposal of the suit on its merits prejudicially or not.[41] The disposal of a suit on its merits is prejudicially affected within the meaning of the sub-section when such disposal is made by a District Judge, instead of being made, as it ought to have been if the valuation were correct, by a Bench of two Judges of the Court of highest jurisdiction in a Province.[42]

62. DEFECT OF JURISDICTION: CURING OF IRREGULARITY.—As observed by Coutts-Trotter, J. in *Naduvil Karnavan* v. *Cheriya Parvathi*,[43] the object of S. 11 of the Suits Valuation Act is to provide a machinery for curing the original lack of jurisdiction of the Court in which the suit was first started. THE EFFECT OF S. 11 of the Suits Valuation Act is simply to place over-valuation or under-valuation of suits on the same footing with other irregularities contemplated by S. 578, C. P. Code of 1882 (S. 99 of the present Code), except that the objection must be taken either in the Court of first instance

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(36) *Ibid.*, 73 I.C. 87 (F.B.).

(37) *Rukmindas* v. *Devasingh*, 96 I.C. 242=1926 Pat. 351=5 Pat. 505 (Appeal not originally filed in High Court, but on valuation found by High Court, appeal to District Judge held not competent).

(38) *Naduvil Karnavan* v. *Cheria Parvathi*, 73 I.C. 87=46 Mad. 631 =1924 Mad. 6 (F.B.); also see 98 I.C. 446=1927 Mad. 201; *cf.* 96 I.C. 242=1926 Pat. 351=5 Pat. 505.

(39) *Hamidunnissa* v. *Gopal Chandra*, 24 Cal. 661=1 C.W.N. 556.

(40) *Raghava Chariar* v. *Raghava Chariar*, 8 I.C. 545=20 M.L.J. 726.

(41) 85 I.C. 445=1925 Oudh 561.

(42) *Ibid.*

(43) 73 I.C. 87=18 M.L.W. 1=45 M.L.J. 135 (F.B.).

or in the lower appellate Court.[44] Section 11 has the effect of curing a want of jurisdiction caused by improper valuation not only in cases where there has been a final disposal by the lower appellate Court, but also where a case has been remanded by the lower appellate Court to the Court of first instance for a finding.[45] Under clause (2) of S. 11, Suits Valuation Act, the appellate Court is authorised to dispose of the appeal as if there had been no defect of jurisdiction in the Court of first instance.[46]

63. **COLLATERAL PROCEEDINGS.**—It has been held by the Madras High Court[47] "that the principle of S. 11, Suits Valuation Act, must be extended to collateral proceedings in the same manner as the principle of S. 21 of the C. P. Code has been held to be applicable to proceedings other than appeals."[48] Accordingly, objection to the *forum* on the ground of pecuniary jurisdiction not taken before the appellate Court cannot be taken in a collateral proceeding.[49]

64. **CLAUSE (3): Remand for further evidence.**—Section 11 of the Suits Valuation Act provides *inter alia* that, if a Court has decided a suit which it was not competent to decide, owing to an under-valuation thereof, then, if the appellate Court is satisfied that an objection as to valuation of the suit was raised in the trial Court and that the determination of the suit by a Court which was not competent to try it has prejudiced the defendant, then such Court shall hear the appeal, if there is sufficient material on the record to enable it to dispose of the appeal. If, however, the Court finds it necessary to have further evidence recorded or to remand the case, then the further evidence shall be recorded by and the remand shall be made to the Court which was competent to hear the suit. The law nowhere authorises an appellate Court to return the plaint for presentation to the proper Court at the hearing of the appeal.[50] Where the value of the suit for the purpose of jurisdiction was not questioned by the defendant, the order of remand for a re-trial on the merits was held incorrect.[1]

65. **DUTY OF COURT.**—In determining whether or not a suit has, for the purpose of Court-fees, been undervalued, evidence should be recorded on the point.[2] If the valuation of suit for purposes of jurisdiction is contested, it is the duty of the Court to decide what the correct valuation is.[3] Where an appellate Court

(44) *Raghava Chariar* v. *Raghava Chariar*, 8 I.C. 545=20 M.L.J. 726.
(45) *Raman* v. *Secretary of State*, 24 Mad. 427.
(46) *Musa Imran* v. *Bhagwan Das*, 100 I.C. 546=1927 All. 359.
(47) *Nune Narasimham* v. *Donepudi Subramaniam*, 98 I.C. 446=1927 Mad. 201.
(48) *Chokkalinga Pillai* v. *Velayudha Mudaliar*, 87 I.C. 152=47 M.L.J. 448=1925 Mad. 117.
(49) *Donepudi Subramaniam* v. *Nune Narasimham*, 1929 Mad. 323=29 M.L.W. 349=56 M.L.J. 489=119 I.C. 46.
(50) *Rajwant Singh* v. *Mutalli*, 116 I.C. 209=1930 Lah. 182.
(1) *Hamir Kaur* v. *Court of Wards*, 1932 Lah. 538.
(2) *Ramdas* v. *Ajudhiadas*, 63 I.C. 685=14 S.L.R. 137.
(3) *Mohini Mohan* v. *Gour Chandra*, 56 I.C. 762=1921 Pat. 300=5 P.L.J. 397=1 P.L.T. 390.

upholds the objection raised in appeal that the trial Court was not competent to entertain and decide the suit, it is the duty of the appellate Court, under S. 11 of the Suits Valuation Act, first to find and to record its reasons for so finding, whether the error in valuation complained of has prejudicially affected the disposal of the suit on the merits.[4] The objection to jurisdiction cannot be given effect to, unless the over-valuation, or under-valuation has been found to have prejudicially affected the disposal of the suit on the merits.[5] Objections as to want of jurisdiction when not raised before the Court of first instance are no ground for reversing a decree when they do not affect the decision of the case on the merits[6] nor can such objection be entertained in second appeal in view of the provisions of S. 11 of Suits Valuation Act.[7] Where there has been no prejudice to the appellant by the hearing of the appeal by a Court of inferior jurisdiction, when as a matter of fact it lay to a Court of superior jurisdiction, the order of such inferior Court should not be interfered with in second appeal.[8] When a Court finds that a suit has been under-valued, and that the plaintiff has done so intentionally, it may require the plaintiff to make a fresh valuation, but has no power to amend the valuation itself.[9]

Proceedings pending at commencement of Part I or II.

12. Nothing in Part I or Part II shall be construed to affect the jurisdiction of any Court—

(*a*) with respect of any suit instituted before rules under Part I applicable to the valuation of the suit take effect, or Part II has come into force, as the case may be, or

(*b*) with respect to any appeal arising out of any such suit.

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(4) *Wahidullah* v. *Kanhayalal*, 25 All. 174; *Musa Imran* v. *Bhagwan Das*, 100 I.C. 546=1927 All. 359; *Dalip Singh* v. *Kundan Singh*, 22 I.C. 614 =36 All. 58; *Ammalu Ammal* v. *Krishnan Nair*, 62 I.C. 715 (Mad.).

(5) *Hamidunnissa* v. *Gopal Chandra*, 24 Cal. 661; also see *Raghunath Charan* v. *Shamo Koeri*, 31 Cal. 344 and 55 P.R. 1906=71 P.L.R. 1906.

(6) *Narayana Nambudri* v. *Narayana Nambudri*, 25 I.C. 25; *V. S. Aiyar* v. *Maung Nyun*, 1929 Rang. 228.

(7) *Kesho Prasad Singh* v. *Lakhu Rai*, 75 I.C. 305=1923 Pat. 581.

(8) *Ilahi Jan* v. *Rahman Ullah*, 1928 Lah. 670=111 I.C. 129.

(9) *Ashiq Ali* v. *Imtiaz Begum*, 39 All. 723=15 A.L.J. 794.

APPENDIX I.

COURT-FEES ACT, 1870.

STATEMENT OF REPEALS AND AMENDMENTS.

SECTION 2, REPEALED	.. ..	Act XIV of 1870, Sch.
SECTION 2, ADDED	.. ..	Act X of 1901, s. 2.
SECTIONS 2 AND 3, AMENDED	..	Act XXIV of 1917, s. 2, and First Sch.
SECTION 3, AMENDED	.. ..	Act XII of 1891.
SECTION 4, AMENDED	.. ..	Act XIX of 1922, s. 2.
SECTION 7, AMENDED	.. ..	Act XII of 1891.
		Act VI of 1905, s. 2.
SECTION 10, AMENDED	.. ..	Act XII of 1891.
SECTION 15, AMENDED	.. ..	Act XX of 1870, s. 1.
SECTION 16, REPEALED	.. ..	Act V of 1908.
SECTION 19, AMENDED	.. ..	Act XV of 1872, s. 2.
		Act VII of 1889, s. 13.
SECTIONS 19A-19H, INSERTED	..	Act XIII of 1875, s. 6.
SECTION 19A, AMENDED	.. ..	Act X of 1901, s. 3.
SECTION 19C, AMENDED	.. ..	Act XII of 1891.
SECTION 19E, AMENDED	.. ..	Act X of 1901, s. 3.
SECTION 19G, AMENDED	.. ..	Act XII of 1891.
SECTION 19H, REPEALED	.. ..	Act VIII of 1890, s. 2 and Sch.
SECTIONS 19H-19K, INSERTED	..	Act XI of 1899, s. 2.
SECTION 19H, AMENDED	.. ..	Act X of 1901, s. 3.
SECTIONS 20, 22 AND 23, AMENDED	..	Act XXXVIII of 1920, s. 2 and Sch. I.
SECTION 24, REPEALED	.. ..	Act XII of 1891.
SECTION 26, AMENDED	.. ..	Act XXXVIII of 1920, s. 2 and Sch. I.
SECTION 31, REPEALED	.. ..	Act XVIII of 1923, s. 163.
SECTION 32, REPEALED	.. ..	Act XII of 1891.
SECTION 34, SUBSTITUTED	.. ..	Act XII of 1891.
SECTION 35, AMENDED	.. ..	Act XXXVIII of 1920, s. 2 and Sch. I.
SCHEDULE I, AMENDED	.. ..	Act XX of 1870.
		Act VIII of 1871.
		Act VII of 1889.
		Act VIII of 1890.
		Act XII of 1891.
		Act VI of 1900.
		Act V of 1908.
		Act VII of 1910.
		Act XI of 1923.
SCHEDULE II, AMENDED	.. ..	Act VI of 1889.
		Act XIII of 1889.
		Act XII of 1891.
		Act XIV of 1911.
		Act V of 1908.
		Act XVII of 1914.
SCHEDULE III, REPEALED	.. ..	Act XIV of 1870.
SCHEDULE III, INSERTED	.. ..	Act XI of 1899.

In Bengal—

SECTION 18, AMENDED	.. ..	Bengal Act IV of 1922.
SECTION 19, AMENDED	.. ..	Bengal Act IV of 1922.
SCHEDULE I, AMENDED	.. ..	Bengal Acts IV and VI of 1922.
SCHEDULE II, AMENDED	.. ..	Bengal Act IV of 1922.

In Bihar and Orissa—

SECTION 4, AMENDED	.. ..	Bihar and Orissa Act II of 1922.
SECTION 7, AMENDED	.. ..	Bihar and Orissa Act II of 1922.
SECTIONS 17, 18, 19, AMENDED	..	Bihar and Orissa Act II of 1922.
SCHEDULES I AND II, AMENDED	..	Bihar and Orissa Act II of 1922.

In Bombay—

SECTION 7, AMENDED	.. ..	Bombay Act III of 1926.
SCHEDULES I AND II, AMENDED	..	Bombay Act III of 1926.

In Burma—

SCHEDULE I, AMENDED	.. ..	Burma Acts XI of 1922 and III of 1926.

In Madras—

SECTION 5, AMENDED	.. ..	Madras Act V of 1922.
SECTION 7, AMENDED	.. ..	Madras Act V of 1922.
SECTION 11, AMENDED	.. ..	Madras Act V of 1922.
SECTION 18, AMENDED	.. ..	Madras Act V of 1922.
SCHEDULES I AND II, AMENDED	..	Madras Act V of 1922.

In the Punjab—

SECTION 4, AMENDED	.. ..	Punjab Act VII of 1922.
SECTION 7, AMENDED	.. ..	Punjab Act VI of 1918.
SECTION 18, AMENDED	.. ..	Punjab Act VII of 1922.
SECTION 20, AMENDED	.. ..	Act XVII of 1887.
SECTION 23, REPEALED	.. ..	Act XVII of 1887.
SCHEDULES I AND II, AMENDED	..	Punjab Act VII of 1922.

In the United Provinces—

SECTION 23, AMENDED	.. ..	United Provinces Act XII of 1922.

APPENDIX II.

AMENDING ACTS.

I.—THE ASSAM COURT-FEES (AMENDMENT) ACT (II OF 1922).

An Act to amend the Court-Fees Act, 1870, *with reference to the scale of Court-fees in Assam.*

WHEREAS it is necessary to revise the scale of Court-fees for Assam, by amendment of the Court-Fees Act, 1870, in its application to Assam, in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. (1) This Act may be called THE ASSAM COURT-FEES (AMENDMENT) ACT, 1922.

(2) It extends to the whole of Assam.

(3) It shall come into force on the first day of May, 1922, and shall remain in force for a period of [six]* years.

2. The Court-Fees Act, 1870, as amended by subsequent legislation, shall be amended, in its application to Assam, in the manner hereinafter provided.

3. In S. 18 of the Court-Fees Act, 1870, hereinafter referred to as "the said Act," for the words "a fee of eight annas" the words "a fee of one rupee" shall be substituted.

4. In item VIII, in S. 19 of the said Act, for the words "one thousand rupees" the words "two thousand rupees" shall be substituted.

5. For Art. 1 in the First Schedule to the said Act the following shall be substituted, namely:—

Number.	Proper Fee.
"1. *Plaint, written statement, pleading, a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) or of cross-objection presented to any Civil or Revenue Court except those mentioned in S. 3.*"	
When the amount or value of the subject-matter in dispute does not exceed one hundred rupees, for every five rupees or part thereof, of such amount or value,	Six annas.
and	
when such amount or value exceeds one hundred rupees, for every ten rupees or part thereof, up to one thousand rupees,	One rupee two annas.
and	

***Sec. 1 (3).**—The word "six" was substituted for the word "three" by Assam Act (III of 1925), S.2.

Number.	Proper Fee.
when such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof in excess of one thousand rupees, up to seven thousand five hundred rupees,	Seven rupees eight annas.
and	
when such amount or value exceeds seven thousand five hundred rupees, for every two hundred and fifty rupees, or part thereof, in excess of seven thousand five hundred rupees, up to ten thousand rupees,	Fifteen rupees.
and	
when such amount or value exceeds ten thousand rupees, for every five hundred rupees or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees,	Twenty-two rupees eight annas.
and	
when such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to fifty thousand rupees,	Thirty rupees.
and	
when such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees:	Thirty-seven rupees eight annas.
Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be ten thousand rupees.	

6. In the third column in Art. 6 in the same schedule to the said Act,—

(*a*) for the words "Four annas," opposite clause (*a*) in the second column, the words "Six annas" shall be substituted; and

(*b*) for the words "Eight annas" opposite the first item in clause (*c*) in the second column, the words "Twelve annas" shall be substituted, and for the words "One rupee" opposite the second item in that clause, the words "One rupee eight annas" shall be substituted.

7. For the entries above the proviso in the second column and for the entries in the third column, in Art. 11 in the same schedule to the said Act, the following shall be substituted, namely:—

Number.	Proper Fee.
"When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two thousand rupees, [on such amount or value up to ten thousand rupees,]	Two per centum on such amount or value.
and	
when such amount or value exceeds ten thousand rupees [* * * * * * *] [on the portion of such amount or value which is in excess of ten thousand rupees, [up to fifty thousand rupees,]	Three per centum [* * * *]
and	
when such amount or value exceeds fifty thousand rupees, [* * * * *] [on the	Four per centum [* * * *]

Number.	Proper Fee.
portion] of such amount or value which is in excess of fifty thousand rupees, [up to a lakh of rupees,]	
and	
when such amount or value exceeds a lakh of rupees, [on the portion] of such amount or value which is in excess of a lakh of rupees.	Five per centum [* * * * *]"

8. For the entry in the second column in Art. 12 in the same schedule to the said Act, and for the first paragraph in the third column in the said Article, the following shall be substituted, namely:—

["When the original amount or value of any debt or security specified in the certificate under S. 8 of the Act, or such amount or value combined with the amount or value of any debt or security to which the certificate is extended under S. 10 of the Act, exceeds one thousand rupees,	Two per centum on such original amount or value and three per centum on the amount or value of any debt or security to which the certificate is extended under S. 10 of the Act.
and	
"when such original or combined amount or value exceeds ten thousand rupees on the portion of such amount or value which is in excess of ten thousand rupees,	Three per centum on such original amount or value and four and a half per centum on the amount or value of any debt or security to which the certificate is extended under S. 10 of the Act.
and	
"when such original or combined amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees,	Four per centum on such original amount or value and six per centum on the amount or value of any debt or security to which the certificate is extended under S. 10 of the Act.
and	
"when such original or combined amount or value exceeds a lakh of rupees, on the portion of such amount or value which is in excess of a lakh of rupees."	Five per centum on such original amount or value and seven and a half per centum on the amount or value of any debt or security to which the certificate is extended under S. 10 of the Act.]"

9. For the table of rates of *ad valorem* fees leviable on the institution of suits, at the end of the same schedule to the said Act, the table set forth in the Schedule to this Act shall be substituted.

10. In Article 1 in the second schedule to the said Act,—

(*a*) in clause (*a*) after the words "Municipal Commissioner" in the third entry in the second column the words "or member of a Local Board" shall be inserted;

(*b*) (*i*) for the words "One anna," opposite clause (*a*) in the second column, the words "Two annas" shall be substituted,

(*ii*) for the words "Eight annas," opposite clause (*b*) in the second column, the following shall be substituted, namely:

"In the case of a complaint or charge of an offence presented to a Criminal Court one rupee, and in other cases ten annas; and

(*iii*) for the words "One rupee" opposite clause (*c*) in the second column, the words "One rupee and eight annas" shall be substituted.

11. In the third column in Article 10 in the same schedule to the said Act,—

(1) for the words "Eight annas," opposite clause (*a*) in the second column, the words "One rupee" shall be substituted; and

(2) for the words "One rupee," opposite clause (*b*) in the second column, the words "One rupee and eight annas" shall be substituted.

12. For Article 11 of the same schedule to the said Act the following shall be substituted, namely:—

Number.	Proper Fee.
"11. *Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree and is presented—*	
(*a*) (*i*) to any Revenue Court or Executive Officer other than the High Court or Chief Controlling Revenue or Executive Authority;	Eight annas.
(*ii*) to any Civil Court other than a High Court.	One rupee.
(*b*) to a Chief Controlling Executive or Revenue Authority.	Two rupees."

13. Above the words "Five rupees" where they occur in the third column, opposite Articles 12 and 13, in the same schedule to the said Act, the words "Ten rupees" shall be inserted opposite Article 12, and the bracket between Articles 12 and 13 in the second column shall be omitted.

14. (1) The words "Ten rupees" in the third column opposite Article 17 in the same schedule to the said Act and the bracket opposite that article in the second column in the same schedule shall be omitted.

(2) In the third column in the said Article—

(*a*) opposite entries (*i*), (*ii*), (*iii*), (*iv*) and (*vi*), the words "Fifteen rupees" shall be inserted.

Art. 11.—The words in the second column, "on such amount . . . . rupees" were substituted for the words "but does not exceed ten thousand rupees" and "on the portion" were substituted for "for the portion" wherever they occur and the words "but does not exceed fifty thousand rupees" and but does "not exceed a lakh of rupees" were omitted; and after the words "in excess of ten thousand rupees" the words "up to fifty thousand rupees" and after the words "in excess of fifty thousand rupees" the words "up to a lakh of rupees" were added by Assam Act IV of 1922, S. 2 (1); and the words "on such amount or value" wherever they occur in the 3rd column were omitted by *ibid.*, S. 2 (2).

Art. 12.—The above cols. 2 and 3 were substituted for the old cols. 2 and 3 by Assam Act, IV of 1922, S. 3.

SCHEDULE I.

ASSAM AND BENGAL.

Table of rates of ad valorem *fees leviable on the institution of suits.*

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fees.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fees.
Rs.	Rs.	Rs. A	Rs.	Rs.	Rs. A.
..	5	0 6	390	400	45 0
5	10	0 12	400	410	46 2
10	15	1 2	410	420	47 4
15	20	1 8	420	430	48 6
20	25	1 14	430	440	49 8
25	30	2 4	440	450	50 10
30	35	2 10	450	460	51 12
35	40	3 0	460	470	52 14
40	45	3 6	470	480	54 0
45	50	3 12	480	490	55 2
50	55	4 2	490	500	56 4
55	60	4 8	500	510	57 6
60	65	4 14	510	520	58 8
65	70	5 4	520	530	59 10
70	75	5 10	530	540	60 12
75	80	6 2	540	550	61 14
80	85	6 10	550	560	63 0
85	90	7 2	560	570	64 2
90	95	7 10	570	580	65 4
95	100	8 2	580	590	66 6
100	110	9 12	590	600	67 8
110	120	11 6	600	610	68 10
120	130	13 0	610	620	69 12
130	140	14 10	620	630	70 14
140	150	16 4	630	640	72 0
150	160	18 0	640	650	73 2
160	170	19 2	650	660	74 4
170	180	20 4	660	670	75 6
180	190	21 6	670	680	76 8
190	200	22 8	680	690	77 10
200	210	23 10	690	700	78 12
210	220	24 12	700	710	79 14
220	230	25 14	710	720	81 0
230	240	27 0	720	730	82 2
240	250	28 2	730	740	83 4
250	260	29 4	740	750	84 6
260	270	30 6	750	760	85 8
270	280	31 8	760	770	86 10
280	290	32 10	770	780	87 12
290	300	33 12	780	790	88 14
300	310	34 14	790	800	90 0
310	320	36 0	800	810	91 2
320	330	37 2	810	820	92 4
330	340	38 4	820	830	93 6
340	350	39 6	830	840	94 8
350	360	40 8	840	850	95 10
360	370	41 10	850	860	96 12
370	380	42 12	860	870	97 14
380	390	43 14	870	880	99 0

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
880	890	100 2	5,200	5,300	435 0
890	900	101 4	5,300	5,400	442 8
900	910	102 6	5,400	5,500	450 0
910	920	103 8	5,500	5,600	457 8
920	930	104 10	5,600	5,700	465 0
930	940	105 12	5,700	5,800	472 8
940	950	106 14	5,800	5,900	480 0
950	960	108 0	5,900	6,000	487 8
960	970	109 2	6,000	6,100	495 0
970	980	110 4	6,100	6,200	502 8
980	990	111 6	6,200	6,300	510 0
990	1,000	112 8	6,300	6,400	517 8
1,000	1,100	120 0	6,400	6,500	525 0
1,100	1,200	127 8	6,500	6,600	532 8
1,200	1,300	135 0	6,600	6,700	540 0
1,300	1,400	142 8	6,700	6,800	547 8
1,400	1,500	150 0	6,800	6,900	555 0
1,500	1,600	157 8	6,900	7,000	562 8
1,600	1,700	165 0	7,000	7,100	570 0
1,700	1,800	172 8	7,100	7,200	577 8
1,800	1,900	180 0	7,200	7,300	585 0
1,900	2,000	187 8	7,300	7,400	592 8
2,000	2,100	195 0	7,400	7,500	600 0
2,100	2,200	202 8	7,500	7,750	615 0
2,200	2,300	210 0	7,750	8,000	630 0
2,300	2,400	217 8	8,000	8,250	645 0
2,400	2,500	225 0	8,250	8,500	660 0
2,500	2,600	232 8	8,500	8,750	675 0
2,600	2,700	240 0	8,750	9,000	690 0
2,700	2,800	247 8	9,000	9,250	705 0
2,800	2,900	255 0	9,250	9,500	720 0
2,900	3,000	262 8	9,500	9,750	735 0
3,000	3,100	270 0	9,750	10,000	750 0
3,100	3,200	277 8	10,000	10,500	772 8
3,200	3,300	285 0	10,500	11,000	795 0
3,300	3,400	292 8	11,000	11,500	817 8
3,400	3,500	300 0	11,500	12,000	840 0
3,500	3,600	307 8	12,000	12,500	862 8
3,600	3,700	315 0	12,500	13,000	885 0
3,700	3,800	322 8	13,000	13,500	907 8
3,800	3,900	330 0	13,500	14,000	930 0
3,900	4,000	337 8	14,000	14,500	952 8
4,000	4,100	345 0	14,500	15,000	975 0
4,100	4,200	352 8	15,000	15,500	997 8
4,200	4,300	360 0	15,500	16,000	1,020 0
4,300	4,400	367 8	16,000	16,500	1,042 8
4,400	4,500	375 0	16,500	17,000	1,065 0
4,500	4,600	382 8	17,000	17,500	1,087 8
4,600	4,700	390 0	17,500	18,000	1,110 0
4,700	4,800	397 8	18,000	18,500	1,132 8
4,800	4,900	405 0	18,500	19,000	1,155 0
4,900	5,000	412 8	19,000	19,500	1,177 8
5,000	5,100	420 0	19,500	20,000	1,200 0
5,100	5,200	427 8	20,000	21,000	1,230 0

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fees	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fees
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
21,000	22,000	1,260 0	55,000	60,000	2,175 0
22,000	23,000	1,290 0	60,000	65,000	2,212 8
23,000	24,000	1,320 0	65,000	70,000	2,250 0
24,000	25,000	1,350 0	70,000	75,000	2,287 8
25,000	26,000	1,380 0	75,000	80,000	2,325 0
26,000	27,000	1,410 0	80,000	85,000	2,362 8
27,000	28,000	1,440 0	85,000	90,000	2,400 0
28,000	29,000	1,470 0	90,000	95,000	2,437 8
29,000	30,000	1,500 0	95,000	1,00,000	2,475 0
30,000	31,000	1,530 0	1,00,000	1,05,000	2,512 8
31,000	32,000	1,560 0	1,05,000	1,10,000	2,550 0
32,000	33,000	1,590 0	1,10,000	1,15,000	2,587 8
33,000	34,000	1,620 0	1,15,000	1,20,000	2,625 0
34,000	35,000	1,650 0	1,20,000	1,25,000	2,662 8
35,000	36,000	1,680 0	1,25,000	1,30,000	2,700 0
36,000	37,000	1,710 0	1,30,000	1,35,000	2,737 8
37,000	38,000	1,740 0	1,35,000	1,40,000	2,775 0
38,000	39,000	1,770 0	1,40,000	1,45,000	2,812 8
39,000	40,000	1,800 0	1,45,000	1,50,000	2,850 0
40,000	41,000	1,830 0	1,50,000	1,55,000	2,887 8
41,000	42,000	1,860 0	1,55,000	1,60,000	2,925 0
42,000	43,000	1,890 0	1,60,000	1,65,000	2,962 8
43,000	44,000	1,920 0	1,65,000	1,70,000	3,000 0
44,000	45,000	1,950 0	1,70,000	1,75,000	3,037 8
45,000	46,000	1,980 0	1,75,000	1,80,000	3,075 0
46,000	47,000	2,010 0	1,80,000	1,85,000	3,112 8
47,000	48,000	2,040 0	1,85,000	1,90,000	3,150 0
48,000	49,000	2,070 0	1,90,000	1,95,000	3,187 8
49,000	50,000	2,100 0	1,95,000	2,00,000	3,225 0
50,000	55,000	2,137 8	2,00,000	2,05,000	3,262 8

and the fee increases at the rate of thirty-seven rupees eight annas for every five thousand rupees or part thereof, up to a maximum fee of ten thousand rupees, for example—

Rs.	Rs. A.	Rs.	Rs. A.
3,00,000	4,012 8	8,00,000	7,762 8
4,00,000	4,762 8	9,00,000	8,512 8
5,00,000	5,512 8	10,00,000	9,262 8
6,00,000	6,262 8	11,00,000	10,000 0
7,00,000	7,012 0		

ASSAM ACT NO. III OF 1932.

THE ASSAM COURT-FEES (AMENDMENT) ACT, 1932.

[Published in the *Assam Gazette* of the 27th April, 1932.]

An Act to amend the Court-Fees Act, 1870.

WHEREAS it is necessary to amend the Court-Fees Act, 1870, in its application to Assam in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. (1) This Act may be called THE ASSAM COURT-FEES (AMENDMENT) ACT, 1932.

(2) It extends to the whole of Assam.

(3) It shall come into force on the 1st May, 1932.

2. In section 7 of the Court-Fees Act, 1870 (hereinafter referred to as the principal Act)—

in sub-clause (*a*) of clause (*v*) for the word "ten" the word "twenty" shall be substituted.

3. For clause (*ii*) of section 10 of the principal Act, the following clause shall be substituted, namely:—

"ii. In such case—

(*a*) the suit shall be stayed until the additional fee is paid and if the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed; and whether the additional fee is or is not paid,

(*b*) the Court may, if it is of opinion that the estimation has been grossly insufficient, further order that the expenses of the commission, or such portion thereof as the Court may think reasonable, be paid by the party in fault to the Government, and the order so made shall have the force and effect of a decree passed by the Court."

II.—BENGAL ACT NO. IV OF 1922.

THE BENGAL COURT-FEES (AMENDMENT) ACT, 1922.

[Published in the *Calcutta Gazette extraordinary* of the 29th March, 1922.]

An Act to amend the Court-Fees Act, 1870, *and the Presidency Small Cause Courts Act,* 1882, *with reference to the scale of Court-fees in Bengal.*

WHEREAS it is necessary to revise the scale of Court-fees for Bengal, by amendment of the Court-Fees Act, 1870, and the Presidency Small Cause Courts Act, 1882, in their application to Bengal, in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. (1) This Act may be called THE BENGAL COURT-FEES (AMENDMENT) ACT, 1922.

(2) It extends to the whole of Bengal.

(3) It shall come into force on the first day of April, 1922.

2. The Court-Fees Act, 1870, as amended by subsequent legislation, and the Presidency Small Cause Courts Act, 1882, as amended by subsequent legislation, shall be amended, in their application to Bengal, in the manner hereinafter provided.

3. In section 18 of the Court-Fees Act, 1870, for the words "a fee of eight annas" the words "a fee of one rupee" shall be substituted.

4. In item viii in section 19 of the same Act for the words "one thousand rupees" the words "two thousand rupees" shall be substituted.

5. For Article 1 in the *first schedule* to the same Act the following shall be substituted, namely:—

"1. Plaint, written statement, pleading, a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) or of cross-objection presented to any Civil or Revenue Court except those mentioned in section 3."	When the amount or value of the subject-matter in dispute does not exceed seventy-five rupees, for every five rupees or part thereof of such amount or value,	Six annas.
	and	
	when such amount or value exceeds seventy-five rupees, for every five rupees or part thereof, in excess of seventy-five rupees, up to one hundred rupees,	Eight annas.
	and	
	when such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to one hundred and fifty rupees,	One rupee two annas.
	and	

1. Plaint, etc.—(*Contd.*)	when such amount or value exceeds one hundred and fifty rupees, for every ten rupees, or part thereof, up to one thousand rupees,	One rupee two annas.
	and	
	when such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to seven thousand five hundred rupees,	Seven rupees eight annas.
	and	
	when such amount or value exceeds seven thousand five hundred rupees, for every two hundred and fifty rupees, or part thereof, in excess of seven thousand five hundred rupees up to ten thousand rupees,	Fifteen rupees.
	and	
	when such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees,	Twenty-two rupees eight annas.
	and	
	when such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to fifty thousand rupees,	Thirty rupees.
	and	
	when such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees:	Thirty-seven rupees eight annas.
	Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be ten thousand rupees."	

6. In the third column in Article 6 in the same schedule to the same Act,—

(*a*) for the words "Four annas," opposite clause (*a*) in the second column, the words "Six annas" shall be substituted; and

(*b*) for the words "Eight annas," opposite the first item in clause (*b*) in the second column, the words "Twelve annas" shall be substituted, and for the words "One rupee," opposite the second item in that clause, the words "One rupee eight annas" shall be substituted.

7. For the entries above the proviso in the second column, and for the entries in the third column in Article 11 in the same schedule to the same Act, the following shall be substituted, namely:—

"When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two thousand rupees, but does not exceed ten thousand rupees,	Two per centum on such amount or value.
and	

when such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees, for the portion of such amount or value which is in excess of ten thousand rupees,	Three per centum on such amount or value.
and	
when such amount or value exceeds fifty thousand rupees, but does not exceed a lakh of rupees, for the portion of such amount or value which is in excess of fifty thousand rupees,	Four per centum on such amount or value.
and	
when such amount or value exceeds a lakh of rupees, for the portion of such amount or value which is in excess of a lakh of rupees."	Five per centum on such amount or value.

8. For the entry in the second column in Article 12 in the same schedule to the same Act, and for the first paragraph in the third column in the said Article, the following shall be substituted, namely:—

"When the amount or value of any debt or security specified in the certificate under section 8 of the Act exceeds one thousand rupees, but does not exceed ten thousand rupees,	Two per centum on such amount or value and three per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act.
and	
when such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees, for the portion of such amount or value which is in excess of ten thousand rupees,	Three per centum on such amount or value and four-and-a-half per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act.
and	
when such amount or value exceeds fifty thousand rupees, but does not exceed a lakh of rupees, for the portion of such amount or value which is in excess of fifty thousand rupees,	Four per centum on such amount or value and six per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act.
and	
when such amount or value exceeds a lakh of rupees, for the portion of such amount or value which is in excess of a lakh of rupees."	Five per centum on such amount or value and seven-and-a-half per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act.

9. For the table of rates of *ad valorem* fees leviable on the institution of suits, at the end of the same schedule to the same Act, the table set forth in the schedule to this Act shall be substituted.

10. In Article I in the *second schedule* to the same Act—

(*a*) in clause (*a*) after the words "Municipal Commissioner" in the third entry in the second column the words "or member of a District Board" shall be inserted;

(*b*) (*i*) for the words "One anna," opposite clause (*a*) in the second column, the words "Two annas" shall be substituted;

(*ii*) for the words "Eight annas," opposite clause (*b*) in the second column, the following shall be substituted, namely:—

"In the case of a complaint or charge of an offence presented to a Criminal Court one rupee, and in other cases twelve annas"; and

(*iii*) for the words "One rupee," opposite clause (*c*) in the second column, the words "One rupee eight annas" shall be substituted.

11. For clause (*d*) in the second column in Article 1 in the same schedule to the same Act, and for the entries opposite that clause in the third column thereof, the following clause and entries shall be substituted, namely:—

"(*d*) (*i*) When presented to the High Court under S. 115 of the Code of Civil Procedure, 1908, for revision of an order—	
(*a*) when the value of the suit to which the order relates does not exceed Rs. 1,000 ..	Five rupees.
(*b*) when the value of the suit exceeds Rs. 1,000.	Ten rupees.
(*ii*) When presented to the High Court otherwise than under that section ..	Two rupees."

12. In the third column in Article 10 in the same schedule to the same Act,—

(1) for the words "Eight annas" opposite clause (*a*) in the second column, the words "One rupee" shall be substituted; and

(2) for the words "One rupee," opposite clause (*b*) in the second column, the words "One rupee eight annas" shall be substituted.

13. For Article 11 in the same schedule to the same Act the following shall be substituted, namely:—

"11. Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree and is presented—	(*a*) (*i*) to any Revenue Court or Executive Officer other than the High Court or Chief Controlling Revenue or Executive Authority,	Eight annas.
	(*ii*) to any Civil Court other than a High Court,	One rupee.
	(*b*) to a Chief Controlling Executive or Revenue Authority,	Two rupees.
	(*c*) to a High Court ..	Five rupees."

14. Above the words "Five rupees," where they occur in the third column, opposite Articles 12 and 13 in the same schedule to the same Act, the words "Ten rupees" shall be inserted opposite Article 12 and the bracket between Articles 12 and 13 in the second column shall be omitted.

15. (1) The words "Ten rupees" in the third column, opposite Article 17 in the same schedule to the same Act, and the bracket opposite that article in the second column in the same schedule shall be omitted.

(2) In the third column in the said Article,—

(*a*) opposite entries i, ii, iv and vi, the words "Fifteen rupees" shall be inserted; and

(*b*) opposite entries iii and v, the words "Twenty rupees" shall be inserted.

16. In section 71 of the Presidency Small Cause Courts Act, 1882,—

(1) in clause (*a*) for the words "five hundred rupees" the words "fifty rupees" shall be substituted;

(2) after clause (*a*) the following shall be inserted, namely:—

"(*b*) when the amount or value of the subject-matter exceeds fifty rupees, but does not exceed five hundred rupees—the sum of six rupees four annas and three annas in the rupee on the excess of such amount or value over fifty rupees;"

(3) clause (*b*) shall be re-numbered as clause (*c*) and in that clause as renumbered for the words "sixty-two rupees eight annas" the words "ninety rupees ten annas" shall be substituted, and after the words "one anna" the words "six pies" shall be inserted.

17. Nothing in this Act shall apply to any probate, letters of administration or certificate in respect of which the fee payable under the law for the time being in force has been paid prior to the commencement of this Act, but which have not issued.

THE SCHEDULE.

TABLE OF RATES OF *ad valorem* FEES LEVIABLE ON THE INSTITUTION OF SUITS.

[*See* S. 9 of the Bengal Court-Fees (Amendment) Act, 1922.]

When the amount or value of the subject-matter excceds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
..	5	0 6	380	390	43 14
5	10	0 12	390	400	45 0
10	15	1 2	400	410	46 2
15	20	1 8	410	420	47 4
20	25	1 14	420	430	48 6
25	30	2 4	430	440	49 8
30	35	2 10	440	450	50 10
35	40	3 0	450	460	51 12
40	45	3 6	460	470	52 14
45	50	3 12	470	480	54 0
50	55	4 2	480	490	55 2
55	60	4 8	490	500	56 4
60	65	4 14	500	510	57 6
65	70	5 4	510	520	58 8
70	75	5 10	520	530	59 10
75	80	6 2	530	540	60 12
80	85	6 10	540	550	61 14
85	90	7 2	550	560	63 0
90	95	7 10	560	570	64 2
95	100	8 2	570	580	65 4
100	110	9 12	580	590	66 6
110	120	11 6	590	600	67 8
120	130	13 0	600	610	68 10
130	140	14 10	610	620	69 12
140	150	16 4	620	630	70 14
150	160	18 0	630	640	72 0
160	170	19 2	640	650	73 2
170	180	20 4	650	660	74 4
180	190	21 6	660	670	75 6
190	200	22 8	670	680	76 8
200	210	23 10	680	690	77 10
210	220	24 12	690	700	78 12
220	230	25 14	700	710	79 14
230	240	27 0	710	720	81 0
240	250	28 2	720	730	82 2
250	260	29 4	730	740	83 4
260	270	30 6	740	750	84 6
270	280	31 8	750	760	85 8
280	290	32 10	760	770	86 10
290	300	33 12	770	780	87 12
300	310	34 14	780	790	88 14
310	320	36 0	790	800	90 0
320	330	37 2	800	810	91 2
330	340	38 4	810	820	92 4
340	350	39 6	820	830	93 6
350	360	40 8	830	840	94 8
360	370	41 10	840	850	95 10
370	380	42 12	850	860	96 12

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
860	870	97 14	4,800	4,900	405 0
870	880	99 0	4,900	5,000	412 8
880	890	100 2	5,000	5,100	420 0
890	900	101 4	5,100	5,200	427 8
900	910	102 6	5,200	5,300	435 0
910	920	103 8	5,300	5,400	442 8
920	930	104 10	5,400	5,500	450 0
930	940	105 12	5,500	5,600	457 8
940	950	106 14	5,600	5,700	465 0
950	960	108 0	5,700	5,800	472 8
960	970	109 2	5,800	5,900	480 0
970	980	110 4	5,900	6,000	487 8
980	990	111 6	6,000	6,100	495 0
990	1,000	112 8	6,100	6,200	502 8
1,000	1,100	120 0	6,200	6,300	510 0
1,100	1,200	127 8	6,300	6,400	517 8
1,200	1,300	135 0	6,400	6,500	525 0
1,300	1,400	142 8	6,500	6,600	532 8
1,400	1,500	150 0	6,600	6,700	540 0
1,500	1,600	157 8	6,700	6,800	547 8
1,600	1,700	165 0	6,800	6,900	555 0
1,700	1,800	172 8	6,900	7,000	562 8
1,800	1,900	180 0	7,000	7,100	570 0
1,900	2,000	187 8	7,100	7,200	577 8
2,000	2,100	195 0	7,200	7,300	585 0
2,100	2,200	202 8	7,300	7,400	592 8
2,200	2,300	210 0	7,400	7,500	600 0
2,300	2,400	217 8	7,500	7,750	615 0
2,400	2,500	225 0	7,750	8,000	630 0
2,500	2,600	232 8	8,000	8,250	645 0
2,600	2,700	240 0	8,250	8,500	660 0
2,700	2,800	247 8	8,500	8,750	675 0
2,800	2,900	255 0	8,750	9,000	690 0
2,900	3,000	262 8	9,000	9,250	705 0
3,000	3,100	270 0	9,250	9,500	720 0
3,100	3,200	277 8	9,500	9,750	735 0
3,200	3,300	285 0	9,750	10,000	750 0
3,300	3,400	292 8	10,000	10,500	772 8
3,400	3,500	300 0	10,500	11,000	795 0
3,500	3,600	307 8	11,000	11,500	817 8
3,600	3,700	315 0	11,500	12,000	840 0
3,700	3,800	322 8	12,000	12,500	862 8
3,800	3,900	330 0	12,500	13,000	885 0
3,900	4,000	337 8	13,000	13,500	907 8
4,000	4,100	345 0	13,500	14,000	930 0
4,100	4,200	352 8	14,000	14,500	952 8
4,200	4,300	360 0	14,500	15,000	975 0
4,300	4,400	367 8	15,000	15,500	997 8
4,400	4,500	375 0	15,500	16,000	1,020 0
4,500	4,600	382 8	16,000	16,500	1,042 8
4,600	4,700	390 0	16,500	17,000	1,065 0
4,700	4,800	397 8	17,000	17,500	1,087 8

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
17,500	18,000	1,110 0	48,000	49,000	2,070 0
18,000	18,500	1,132 8	49,000	50,000	2,100 0
18,500	19,000	1,155 0	50,000	55,000	2,137 8
19,000	19,500	1,177 8	55,000	60,000	2,175 0
19,500	20,000	1,200 0	60,000	65,000	2,212 8
20,000	21,000	1,230 0	65,000	70,000	2,250 0
21,000	22,000	1,260 0	70,000	75 000	2,287 8
22,000	23,000	1,290 0	75,000	80,000	2,325 0
23,000	24,000	1,320 0	80,000	85,000	2,362 8
24,000	25,000	1,350 0	85,000	90,000	2,400 0
25,000	26,000	1,380 0	90,000	95,000	2,437 8
26,000	27,000	1,410 0	95,000	1,00,000	2,475 0
27,000	28,000	1,440 0	1,00,000	1,05,000	2,512 8
28,000	29,000	1,470 0	1,05,000	1,10,000	2,550 0
29,000	30,000	1,500 0	1,10,000	1,15,000	2,587 8
30,000	31,000	1,530 0	1,15,000	1,20,000	2,625 0
31,000	32,000	1,560 0	1,20,000	1,25,000	2,662 8
32,000	33,000	1,590 0	1,25,000	1,30,000	2,700 0
33,000	34,000	1,620 0	1,30,000	1,35,000	2,737 8
34,000	35,000	1,650 0	1,35,000	1,40,000	2,775 0
35,000	36,000	1,680 0	1,40,000	1,45,000	2,812 8
36,000	37,000	1,710 0	1,45,000	1,50,000	2,850 0
37,000	38,000	1,740 0	1,50,000	1,55,000	2,887 8
38,000	39,000	1,770 0	1,55,000	1,60,000	2,925 0
39,000	40,000	1,800 0	1,60,000	1,65,000	2,962 8
40,000	41,000	1,830 0	1,65,000	1,70,000	3,000 0
41,000	42,000	1,860 0	1,70,000	1,75,000	3,037 8
42,000	43,000	1,890 0	1,75,000	1,80,000	3,075 0
43,000	44,000	1,920 0	1,80,000	1,85,000	3,112 8
44,000	45,000	1,950 0	1,85,000	1,90,000	3,150 0
45,000	46,000	1,980 0	1,90,000	1,95,000	3,187 8
46,000	47,000	2,010 0	1,95,000	2,00,000	3,225 0
47,000	48,000	2,040 0	2,00,000	2,05,000	3,262 8

and the fee increases at the rate of thirty-seven rupees eight annas for every five thousand rupees, or part thereof, up to a maximum fee of ten thousand rupees, for example—

Rs.	Rs. A.
3,00,000	4,012 8
4,00,000	4,762 8
5,00,000	5,512 8
6,00,000	6,262 8
7,00,000	7,012 8
8,00,000	7,762 8
9,00,000	8,512 8
10,00,000	9,262 8
11,00,000	10,000 0

III.—BENGAL ACT NO. VI OF 1922.

THE BENGAL COURT-FEES (AMENDMENT NO. II) ACT, 1922.

[Published in the *Calcutta Gazette* of the 26th July, 1922.]

An Act further to amend the Court-Fees Act, 1870, with reference to the scale of Court-fees in Bengal.

WHEREAS it is necessary further to amend the Court-Fees Act, 1870, in its application to Bengal in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. (1) This Act may be called THE BENGAL COURT-FEES (AMENDMENT No. II) ACT, 1922.

(2) It extends to the whole of Bengal.

2. In Article 1 in the first schedule to the Court-Fees Act, 1870 [as amended by the Bengal Court-Fees (Amendment) Act, 1922], hereinafter referred to as the said Act,—

(*a*) the commas before and after the word "pleading" in the first column shall be omitted,

(*b*) for the words "in value" in the first entry in the second column the words "or value" shall be substituted, and

(*c*) the word "and" between the third and fourth entries in the second column shall be omitted.

3. (1) In the second column of Articles 11 and 12 in the *first schedule* to the said Act,—

(*a*) for the words "but does not exceed ten thousand rupees" the words "on such amount or value up to ten thousand rupees" shall be substituted.

(*b*) for the words "for the portion", wherever they occur, the words "on the portion" shall be substituted,

(*c*) the words "but does not exceed fifty thousand rupees" and the words "but does not exceed a lakh of rupees" shall be omitted, and

(*d*) after the words "in excess of ten thousand rupees" the words "up to fifty thousand rupees" and after the words "in excess of fifty thousand rupees" the words "up to a lakh of rupees" shall be added.

(2) In the third column of Article 11 in the first schedule to the said Act, the words "on such amount or value", wherever they occur, shall be omitted.

4. The amendments set forth in sections 2 and 3 shall be deemed to have been made with effect from the commencement of the Bengal Court-Fees (Amendment) Act, 1922.

IV.—BIHAR AND ORISSA ACT NO. II OF 1922.

THE BIHAR AND ORISSA COURT-FEES (AMENDMENT) ACT, 1922.

[The Assent of the Governor-General to this Act was published in the *Bihar and Orissa Gazette extraordinary* of the 21st August, 1922.]

An Act to amend the Court-Fees Act, 1870.

WHEREAS it is expedient to amend the Court-Fees Act, 1870, in its application to the Province of Bihar and Orissa in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. (1) This Act may be called THE BIHAR AND ORISSA COURT-FEES (AMENDMENT) ACT, 1922.

(2) It extends to the whole of Bihar and Orissa including the Santal Parganas.

(3) It shall come into force on the 24th day of August, 1922.

2. In paragraph 3 of section 4 of the Court-Fees Act, 1870, as amended by subsequent legislation and hereinafter called the principal Act, for the word "two" shall be substituted the word "one".

3. In clause (*a*) of section 7 (*v*) of the principal Act, for the word "ten" shall be substituted the word "twenty" and in clause (*b*) of the said section for the word "five" shall be substituted the word "ten".

4. In section 17 of the principal Act, after the words "of appeal" in both places where they occur the words "or of cross-objection" shall be inserted.

5. In section 18 of the principal Act, for the words "a fee of eight annas" the words "a fee of twelve annas" shall be substituted.

6. In item *viii* of section 19 of the principal Act, for the words "one thousand rupees" the words "two thousand rupees" shall be substituted.

7. (1) In Article 1 of Schedule I of the principal Act, for the entry in the first column the following entry shall be substituted, namely:—

"(1) Plaint, written statement, pleading, a set-off, or counter-claim or memorandum of appeal or of cross-objection, not otherwise provided for in this Act, presented to any Civil or Revenue Court except those mentioned in section 3."

(2) For the "proper fees" set out in the third column of the said Schedule I and shown opposite Article 1 in Schedule A of this Act, the "proper fees" shown against them in the second column of the said Schedule A shall be substituted.

(3) The proviso in Article 1 of the said Schedule I shall be omitted.

8. For the "proper fees" set out in Schedule I of the principal Act for Articles 6, 7, 8 and 9 and shown in Schedule A of this Act, the "proper fees" shown against them in the second column of the said Schedule A shall be substituted.

9. For the entries above the proviso in the second column and for the entries in the third column, in Article 11 of Schedule I of the principal Act, the following shall be substituted, namely:—

"When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two thousand rupees, on such amount or value up to ten thousand rupees,	Two per centum.
and	
when such amount or value exceeds ten thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees,	Three per centum.
and	
when such amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees,	Four per centum.
and	
when such amount or value exceeds a lakh of rupees, on the portion of such amount or value which is in excess of one lakh of rupees.	Five per centum.

10. For the entry in the second column of Article 12 of Schedule I of the principal Act, and for the first paragraph in the third column of the said Article, the following shall be substituted, namely:—

"When the amount or value of any debt or security specified in the certificate under section 8 of the Act exceeds one thousand rupees, on such amount or value up to ten thousand rupees,	Two per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, three per centum.
and	
when such amount or value exceeds ten thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees,	Three per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, four-and-a-half per centum.
and	
when such amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees,	Four per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, six per centum.
and	
when such amount or value exceeds a lakh of rupees, on the portion of such amount or value which is in excess of one lakh of rupees.	Five per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, seven-and-a-half per centum."

11. For the table of rates of *ad valorem* fees annexed to Schedule I of the principal Act, the table set forth in Schedule B of this Act shall be substituted.

12. (1) In the first column of the said Schedule II after the words "memorandum of appeal" in Articles 5, 11, 17, 20 and 21 the words "or of cross-objection" shall be inserted.

(2) For the "proper fees" set out in the said Schedule II, and shown in Schedule C of this Act, the "proper fees" shown against them in the second column of the said Schedule C shall be substituted.

13. Nothing in this Act shall apply to any probate, letters of administration or certificate under the Succession Certificate Act, 1889, in respect of which the fee payable under the law for the time being in force has been paid prior to the commencement of this Act, but which have not issued.

SCHEDULE A.

[*See* Ss. 7 (3) and 8 of the Bihar and Orissa Court-Fees (Amendment) Act, 1922.]

Proper fees set out in Schedule I of the principal Act.			Proper fees to be substituted.
Article 1	..	Twelve annas	.. One rupee.
		Five rupees	.. Seven rupees and eight annas.
		Ten rupees	.. Fifteen rupees.
		Fifteen rupees	.. Twenty-two rupees and eight annas.
		Twenty rupees	.. Thirty rupees.
		Twenty-five rupees	.. Thirty-seven rupees and eight annas.

Proper fees set out in Schedule I of the principal Act.		Proper fees to be substituted.	
Articie 6 ..	Four annas	..	Six annas.
	Eight annas	..	Twelve annas.
	One rupee	..	One rupee and eight annas.
Article 7 ..	Eight annas	..	Twelve annas.
	One rupee	..	One rupee and eight annas.
	Four rupees	..	Six rupees.
Article 8 ..	The amount of the duty chargeable on the original.		One and a half times the amount of the duty chargeable on the original.
Article 9 ..	Eight annas	..	Twelve annas.
	Eight annas	..	Twelve annas.

SCHEDULE B.

TABLE OF RATES OF *Ad valorem* FEES LEVIABLE ON THE INSTITUTION OF SUITS.

[*See* S. 11 of the Bihar and Orissa Court-Fees (Amendment) Act, 1922.]

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
..	5	0 6	180	190	16 8
5	10	0 12	190	200	17 8
10	15	1 2	200	210	18 8
15	20	1 8	210	220	19 8
20	25	1 14	220	230	20 8
25	30	2 4	230	240	21 8
30	35	2 10	240	250	22 8
35	40	3 0	250	260	23 8
40	45	3 6	260	270	24 8
45	50	3 12	270	280	25 8
50	55	4 2	280	290	26 8
55	60	4 8	290	300	27 8
60	65	4 14	300	310	28 8
65	70	5 4	310	320	29 8
70	75	5 10	320	330	30 8
75	80	6 0	330	340	31 8
80	85	6 6	340	350	32 8
85	90	6 12	350	360	33 8
90	95	7 2	360	370	34 8
95	100	7 8	370	380	35 8
100	110	8 8	380	390	36 8
110	120	9 8	390	400	37 8
120	130	10 8	400	410	38 8
130	140	11 8	410	420	39 8
140	150	12 8	420	430	40 8
150	160	13 8	430	440	41 8
160	170	14 8	440	450	42 8
170	180	15 8	450	460	43 8

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
460	470	44 8	980	990	96 8
470	480	45 8	990	1,000	97 8
480	490	46 8	1,000	1,100	105 0
490	500	47 8	1,100	1,200	112 8
500	510	48 8	1,200	1,300	120 0
510	520	49 8	1,300	1,400	127 8
520	530	50 8	1,400	1,500	135 0
530	540	51 8	1,500	1,600	142 8
540	550	52 8	1,600	1,700	150 0
550	560	53 8	1,700	1,800	157 8
560	570	54 8	1,800	1,900	165 0
570	580	55 8	1,900	2,000	172 8
580	590	56 8	2,000	2,100	180 0
590	600	57 8	2,100	2,200	187 8
600	610	58 8	2,200	2,300	195 0
610	620	59 8	2,300	2,400	202 8
620	630	60 8	2,400	2,500	210 0
630	640	61 8	2,500	2,600	217 8
640	650	62 8	2,600	2,700	225 0
650	660	63 8	2,700	2,800	232 8
660	670	64 8	2,800	2,900	240 0
670	680	65 8	2,900	3,000	247 8
680	690	66 8	3,000	3,100	255 0
690	700	67 8	3,100	3,200	262 8
700	710	68 8	3,200	3,300	270 0
710	720	69 8	3,300	3,400	277 8
720	730	70 8	3,400	3,500	285 0
730	740	71 8	3,500	3,600	292 8
740	750	72 8	3,600	3,700	300 0
750	760	73 8	3,700	3,800	307 8
760	770	74 8	3,800	3,900	315 0
770	780	75 8	3,900	4,000	322 8
780	790	76 8	4,000	4,100	330 0
790	800	77 8	4,100	4,200	337 8
800	810	78 8	4,200	4,300	345 0
810	820	79 8	4,300	4,400	352 8
820	830	80 8	4,400	4,500	360 0
830	840	81 8	4,500	4,600	367 8
840	850	82 8	4,600	4,700	375 0
850	860	83 8	4,700	4,800	382 8
860	870	84 8	4,800	4,900	390 0
870	880	85 8	4,900	5,000	397 8
880	890	86 8	5,000	5 250	412 8
890	900	87 8	5,250	5,500	427 8
900	910	88 8	5,500	5,750	442 8
910	920	89 8	5,750	6,000	457 8
920	930	90 8	6,000	6,250	472 8
930	940	91 8	6,250	6,500	487 8
940	950	92 8	6,500	6,750	502 8
950	960	93 8	6,750	7,000	517 8
960	970	94 8	7,000	7,250	532 8
970	980	95 8	7,250	7,500	547 8

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
7,500	7,750	562 8	32,000	34,000	1,507 8
7,750	8,000	577 8	34,000	36,000	1,537 8
8,000	8,250	592 8	36,000	38,000	1,567 8
8,250	8,500	607 8	38,000	40,000	1,597 8
8,500	8,750	622 8	40,000	42,000	1,627 8
8,750	9,000	637 8	42,000	44,000	1,657 8
9,000	9,250	652 8	44,000	46,000	1,687 8
9,250	9,500	667 8	46,000	48,000	1,717 8
9,500	9,750	682 8	48,000	50,000	1,747 8
9,750	10,000	697 8	50,000	55,000	1,785 0
10,000	10,500	720 0	55,000	60,000	1,822 8
10,500	11,000	742 8	60,000	65,000	1,860 0
11,000	11,500	765 0	65,000	70,000	1,897 8
11,500	12,000	787 8	70,000	75,000	1,935 0
12,000	12,500	810 0	75,000	80,000	1,972 8
12,500	13,000	832 8	80,000	85,000	2,010 0
13,000	13,500	855 0	85,000	90,000	2,047 8
13,500	14,000	877 8	90,000	95,000	2,085 0
14,000	14,500	900 0	95,000	1,00,000	2,122 8
14,500	15,000	922 8	1,00,000	1,05,000	2,160 0
15,000	15,500	945 0	1,05,000	1,10,000	2,197 8
15,500	16,000	967 8	1,10,000	1,15,000	2,235 0
16,000	16,500	990 0	1,15,000	1,20,000	2,272 8
16,500	17,000	1,012 8	1,20,000	1,25,000	2,310 0
17,000	17,500	1,035 0	1,25,000	1,30,000	2,347 8
17,500	18,000	1,057 8	1,30,000	1,35,000	2,385 0
18,000	18,500	1,080 0	1,35,000	1,40,000	2,422 8
18,500	19,000	1,102 8	1,40,000	1,45,000	2,460 0
19,000	19,500	1,125 0	1,45,000	1,50,000	2,497 8
19,500	20,000	1,147 8	1,50,000	1,55,000	2,535 0
20,000	21,000	1,177 8	1,55,000	1,60,000	2,572 8
21,000	22,000	1,207 8	1,60,000	1,65,000	2,610 0
22,000	23,000	1,237 8	1,65,000	1,70,000	2,647 8
23,000	24,000	1,267 8	1,70,000	1,75,000	2,685 0
24,000	25,000	1,297 8	1,75,000	1,80,000	2,722 8
25,000	26,000	1,327 8	1,80,000	1,85,000	2,760 0
26,000	27,000	1,357 8	1,85,000	1,90,000	2,797 8
27,000	28,000	1,387 8	1,90,000	1,95,000	2,835 0
28,000	29,000	1,417	1,95,000	2,00,000	2,872 8
29,000	30,000	1,447	2,00,000	2,05,000	2,910 0
30,000	32,000	1,477			

and the fee increases at the rate of thirty-seven rupees eight annas for every five thousand rupees, or part thereof, for example, when the amount or value of the subject-matter exceeds

Rs.		Rs.
3,00,000	....	3,660
4,00,000	....	4,410
5,00,000	....	5,160
6,00,000	....	5,910
7,00,000	....	6,660
8,00,000	....	7,410
9,00,000	....	8,160
10,00,000	....	8,910
11,00,000	....	9,660

SCHEDULE C.

[*See* S. 12 (4) of the Bihar and Orissa Court-Fees (Amendment) Act, 1922.]

Proper fees set out in Schedule II of the principal Act.		Proper fees to be substituted.
Article 1 ..	One anna ..	Two annas.
	Eight annas ..	Twelve annas.
	One rupee ..	One rupee and eight annas.
	Two rupees ..	Three rupees.
Article 1-A ..	Twelve annas in addition to any fee levied on the application under clause (*a*), clause (*b*) or clause (*d*) of Article 1 of this Schedule.	One rupee in addition to any fee levied on the application under clause (*a*), clause (*b*) or clause (*d*) of Article 1 of this Schedule.
Article 10 ..	Eight annas ..	One rupee.
	One rupee ..	Two rupees.
	Two rupees ..	Three rupees.
Article 11 ..	Eight annas ..	One rupee.
	Two rupees ..	Four rupees.
Article 12 ..	Five rupees ..	Ten rupees.
Article 14 ..	Five rupees ..	Ten rupees.
Articles 17, 18 and 19.	Ten rupees ..	Fifteen rupees.
Articles 20 and 21.	Twenty rupees. ..	Thirty rupees.

V.—BOMBAY ACT NO. II OF 1932.

(First published, after having received the assent of the Governor-General, in the *Bombay Government Gazette* on the 30th March, 1932.)

An Act to provide for the levy of a duty on consumption of electrical energy for the purpose of lights and fans in the Presidency of Bombay and to amend the Court-Fees Act, 1870, *and the Indian Stamp Act,* 1899, *in their application to the said Presidency.*

WHEREAS it is expedient to provide for the levy of a duty on consumption of electrical energy for the purpose of lights and fans in the Presidency of Bombay and to amend the Court-Fees Act, 1870, and the Indian Stamp Act, 1899, in their application to the said Presidency for the purposes hereinafter appearing; and whereas the previous sanction of the Governor-General required by sub-section (3) of section 80-A of the Government of India Act and the previous sanction of the Governor required by section 80-C of the said Act have been obtained for the passing of this Act;

It is hereby enacted as follows:—

PART I.—*Preliminary.*

1. This Act may be called THE BOMBAY FINANCE ACT, 1932.

2. (1) Except where it is otherwise provided in this Act, this Act extends to the whole of the Presidency of Bombay.

(2) It shall come into force on the 1st day of April, 1932.

(3) This section and sections 3 to 15 containing Parts II, III and IV shall remain in operation for one year from the date on which this Act comes into force.

* * * *

PART III.—*Court-fees.*

12. In section 7 of the Court-Fees Act, 1870, in its application to the Presidency of Bombay, in this Part referred to as the said Act,—

(*a*) to clause (*d*) of paragraph (*iv*) the words "or other consequential relief" shall be added;

(*b*) after the word "appeal" in paragraph (*iv*) the words "with a minimum fee of rupees five in the case of suits falling under clause (*c*)" shall be inserted; and

(*c*) in clauses (1), (2) and (3) of the proviso to paragraph (*v*) for the words "five," "ten" and "ten" the words "seven and a half," "fifteen" and "fifteen," shall respectively, be substituted.

13. For Articles 1, 8, 11, 12 and 12-A of, and the Table of Rates of *ad valorem* fees in Schedule I to the said Act the following shall be substituted, namely:—

SCHEDULE I.

Ad Valorem FEES.

Number.		Proper Fee.
1. Plaint, written statement, pleading, a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) or of cross-objection presented to any Civil or Revenue Court except those mentioned in section 3.	When the amount or value of the subject-matter in dispute does not exceed five rupees.	Six annas.
	When such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees.	Six annas.
	When such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees.	Twelve annas.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to five thousand rupees.	Five rupees.
	When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees.	Fifteen rupees.

Number.		Proper Fee.
1. Plaint, written statement, etc.—*Concld*	When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excesss of ten thousand rupees, up to twenty thousand rupees.	Twenty-two rupees and eight annas.
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees.	Thirty rupees.
	When such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees.	Thirty rupees.
	When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees:	Thirty rupees.
	Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be ten thousand rupees.	
8. Copy of any document liable to stamp-duty under the Indian Stamp Act, 1899, when left by any party to a suit or proceeding in place of the original withdrawn.	(*a*)—When the stamp-duty chargeable on the original does not exceed one rupee.	The amount of the duty chargeable on the original.
	(*b*)—In any other case.	One rupee.
11. Probate of a will or letters of administration with or without will annexed.	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees, on the part of the amount or value in excess of one thousand rupees, up to ten thousand rupees.	Two per centum.
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds	Three per centum.

Number.		Proper Fee.
11. Probate of a will, etc.—*Contd.*	ten thousand rupees, on the part of the amount or value in excess of ten thousand rupees, up to fifty thousand rupees.	
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds fifty thousand rupees, on the part of the amount or value in excess of fifty thousand rupees, up to one lakh of rupees.	Four per centum.
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one lakh of rupees, on the part of the amount or value in excess of one lakh of rupees, up to two lakhs of rupees.	Four and a half per centum.
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two lakhs of rupees, on the part of the amount or value in excess of two lakhs of rupees, up to two lakhs and fifty thousand rupees.	Five per centum.
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two lakhs and fifty thousand rupees, on the part of the amount or value in excess of two lakhs and fifty thousand rupees, up to three lakhs of rupees.	Five and a half per centum.
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds three lakhs of rupees, on the part of the amount or value in excess of three lakhs of rupees, up to four lakhs of rupees.	Six per centum.
	When the amount or value of the property in respect of which the grant of probate	Six and a half per centum.

Number.		Proper Fee.
11. Probate of a will, etc.—*Concld.*	or letters is made exceeds four lakhs of rupees, on the part of the amount or value in excess of four lakhs of rupees, up to five lakhs of rupees.	
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds five lakhs of rupees, on the part of the amount or value in excess of five lakhs of rupees:	Seven per centum.
	Provided that when, after the grant of a certificate under Part X of the Indian Succession Act, 1925 or under Bombay Regulation VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.	
12. Certificate under Part X of the Indian Succession Act, 1925.	..	The fee leviable in the case of a probate (article 11) on the amount or value of any debt or security specified in the certificate under section 374 of the Act, and one and a half times this fee on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act. NOTE.— (1) The amount of a debt is its amount, including interest on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained.

Number.		Proper Fee.
12. Certificate under Part X, etc.—*Concld.*		(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act; and where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.
12-A. Certificate under Bombay Regulation VIII of 1827.	..	The fee leviable in the case of a probate (article 11) on the amount or value of the property in respect of which the certificate is granted.

TABLE OF RATES OF *ad valorem* FEES LEVIABLE ON THE INSTITUTION OF SUITS.

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
..	5	0 6	65	70	5 4
5	10	0 12	70	75	5 10
10	15	1 2	75	80	6 0
15	20	1 8	80	85	6 6
20	25	1 14	85	90	6 12
25	30	2 4	90	95	7 2
30	35	2 10	95	100	7 8
35	40	3 0	100	110	8 4
40	45	3 6	110	120	9 0
45	50	3 12	120	130	9 12
50	55	4 2	130	140	10 8
55	60	4 8	140	150	11 4
60	65	4 14	150	160	12 0

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
160	170	12 12	680	690	51 12
170	180	13 8	690	700	52 8
180	190	14 4	700	710	53 4
190	200	15 0	710	720	54 0
200	210	15 12	720	730	54 12
210	220	16 8	730	740	55 8
220	230	17 4	740	750	56 4
230	240	18 0	750	760	57 0
240	250	18 12	760	770	57 12
250	260	19 8	770	780	58 8
260	270	20 4	780	790	59 4
270	280	21 0	790	800	60 0
280	290	21 12	800	810	60 12
290	300	22 8	810	820	61 8
300	310	23 4	820	830	62 4
310	320	24 0	830	840	63 0
320	330	24 12	840	850	63 12
330	340	25 8	850	860	64 8
340	350	26 4	860	870	65 4
350	360	27 0	870	880	66 0
360	370	27 12	880	890	66 12
370	380	28 8	890	900	67 8
380	390	29 4	900	910	68 4
390	400	30 0	910	920	69 0
400	410	30 12	920	930	69 12
410	420	31 8	930	940	70 8
420	430	32 4	940	950	71 4
430	440	33 0	950	960	72 0
440	450	33 12	960	970	72 12
450	460	34 8	970	980	73 8
460	470	35 4	980	990	74 4
470	480	36 0	990	1,000	75 0
480	490	36 12	1,000	1,100	80 0
490	500	37 8	1,100	1,200	85 0
500	510	38 4	1,200	1,300	90 0
510	520	39 0	1,300	1,400	95 0
520	530	39 12	1,400	1,500	100 0
530	540	40 8	1,500	1,600	105 0
540	550	41 4	1,600	1,700	110 0
550	560	42 0	1,700	1,800	115 0
560	570	42 12	1,800	1,900	120 0
570	580	43 8	1,900	2,000	125 0
580	590	44 4	2,000	2,100	130 0
590	600	45 0	2,100	2,200	135 0
600	610	45 12	2,200	2,300	140 0
610	620	46 8	2,300	2,400	145 0
620	630	47 4	2,400	2,500	150 0
630	640	48 0	2,500	2,600	155 0
640	650	48 12	2,600	2,700	160 0
650	660	49 8	2,700	2,800	165 0
660	670	50 4	2,800	2,900	170 0
670	680	51 0	2,900	3,000	175 0

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
3,000	3,100	180 0	10,000	10,500	597 8
3,100	3,200	185 0	10,500	11,000	620 0
3,200	3,300	190 0	11,000	11,500	642 8
3,300	3,400	195 0	11,500	12,000	665 0
3,400	3,500	200 0	12,000	12,500	687 8
3,500	3,600	205 0	12,500	13,000	710 0
3,600	3,700	210 0	13,000	13,500	732 8
3,700	3,800	215 0	13,500	14,000	755 0
3,800	3,900	220 0	14,000	14,500	777 8
3,900	4,000	225 0	14,500	15,000	800 0
4,000	4,100	230 0	15,000	15,500	822 8
4,100	4,200	235 0	15,500	16,000	845 0
4,200	4,300	240 0	16,000	16,500	867 8
4,300	4,400	245 0	16,500	17,000	890 0
4,400	4,500	250 0	17,000	17,500	912 8
4,500	4,600	255 0	17,500	18,000	935 0
4,600	4,700	260 0	18,000	18,500	957 8
4,700	4,800	265 0	18,500	19,000	980 0
4,800	4,900	270 0	19,000	19,500	1,002 8
4,900	5,000	275 0	19,500	20,000	1,025 0
5,000	5,250	290 0	20,000	21,000	1,055 0
5,250	5,500	305 0	21,000	22,000	1,085 0
5,500	5,750	320 0	22,000	23,000	1,115 0
5,750	6,000	335 0	23,000	24,000	1,145 0
6,000	6,250	350 0	24,000	25,000	1,175 0
6,250	6,500	365 0	25,000	26,000	1,205 0
6,500	6,750	380 0	26,000	27,000	1,235 0
6,750	7,000	395 0	27,000	28,000	1,265 0
7,000	7,250	410 0	28,000	29,000	1,295 0
7,250	7,500	425 0	29,000	30,000	1,325 0
7,500	7,750	440 0	30,000	32,000	1,355 0
7,750	8,000	455 0	32,000	34,000	1,385 0
8,000	8,250	470 0	34,000	36,000	1,415 0
8,250	8,500	485 0	36,000	38,000	1,445 0
8,500	8,750	500 0	38,000	40,000	1,475 0
8,750	9,000	515 0	40,000	42,000	1,505 0
9,000	9,250	530 0	42,000	44,000	1,535 0
9,250	9,500	545 0	44,000	46,000	1,565 0
9,500	9,750	560 0	46,000	48,000	1,595 0
9,750	10,000	575 0	48,000	50,000	1,625 0

and the fee increases at the rate of thirty rupees for every five thousand rupees, or part thereof, up to a maximum of ten thousand rupees, for example—

Rs.	Rs. A.	Rs.	Rs. A.
1,00,000	1,925 0	9,00,000	6,725 0
2,00,000	2,525 0	10,00,000	7,325 0
3,00,000	3,125 0	11,00,000	7,925 0
4,00,000	3,725 0	12,00,000	8,525 0
5,00,000	4,325 0	13,00,000	9,125 0
6,00,000	4,925 0	14,00,000	9,725 0
7,00,000	5,525 0	15,00,000	10,000 0
8,00,000	6,125 0		

14. For Articles 1, 6, 7, 12, 14, 17, 18, 19, 20 and 21 of Schedule II to the said Act the following shall be substituted, namely:—

SCHEDULE II.

FIXED FEES.

Number.		Proper Fee.
1. Application or petition.	(*a*) When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings: or when presented to any officer of land-revenue by any person holding temporarily settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement: or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement: or when presented to any Civil Court other than a principal Civil Court of original jurisdiction, or to any Court of Small Causes constituted under the Provincial Small Causes Courts Act, 1887, or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees, not being an application for assistance under section 86 of the Bombay Land Revenue Code, 1879: or when presented to any Civil, Criminal or Revenue Court, or to any Board or executive officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, Board or officer,	Two annas.

Number.		Proper Fee.
1. Application or petition—*Contd.*	or of any other document on record in such Court or Office.	
	(*aa*) When presented to a Collector or other officer of revenue for assistance under section 86 of the Bombay Land Revenue Code, 1879.	Four annas.
	(*b*) When containing a complaint or charge of any offence other than an offence for which police-officers may, under the Criminal Procedure Code, 1898, arrest without warrant, and presented to any Criminal Court:	Eight annas.
	or when presented to a Civil, Criminal or Revenue Court, or to a Collector, or any Revenue-officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity and not otherwise provided for by this Act:	
	or to deposit in Court revenue or rent:	
	or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant.	
	(*c*) When presented to a Chief Commissioner or other Chief Controlling Revenue or Executive Authority, or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a Division and not otherwise provided for by this Act.	Two rupees.
	(*d*) When presented to a High Court.	Four rupees.
6. Bail-bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1898, or the Code of Civil Proce-	..	One rupee.

Number.		Proper Fee.
dure, 1908, and not otherwise provided for by this Act.		
7. Undertaking under section 49 of the Indian Divorce Act, 1869.	..	One rupee.
12. Caveat.	When the amount or value of the property involved does not exceed two thousand rupees.	Five rupees.
	When the amount or value of the property involved exceeds two thousand rupees.	Ten rupees.
14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866.	..	Ten rupees.
17. Plaint or memorandum of appeal in each of the following suits:—		
(*i*) to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court;	When the amount or value of the property involved does not exceed five hundred rupees.	Ten rupees.
(*ii*) to alter or cancel any entry in a register of the names of proprietors of revenue paying estates; and	When the amount or value of the property involved exceeds five hundred rupees.	Fifteen rupees.
(*iii*) to obtain a declaratory decree or order, where no consequential relief is prayed;	..	Fifteen rupees.
(*iv*) to set aside alienation;	..	Fifteen rupees.
(*v*) to set aside a decree or award;	When the amount or value of the property involved does not exceed five hundred rupees.	Ten rupees.
	When the amount or value of the property involved exceeds five hundred rupees.	Fifteen rupees.
(*vi*) to set aside an adoption; and	..	Fifteen rupees.

Number.		Proper Fee.
(*vii*) any other suit where it is not possible to estimate at a money-value the subject-matter in dispute, and which is not otherwise provided for by this Act.	..	Fifteen rupees.
18. Application—		
(*a*) under paragraph 17 of the Second Schedule to the Code of Civil Procedure, 1908;	..	Ten rupees.
(*b*) for probate or letters of administration or for revocation thereof under the Indian Succession Act, 1925;	When the amount or value of the Estate does not exceed two thousand rupees.	Two rupees.
	When it exceeds two thousand rupees, but does not exceed five thousand rupees.	Five rupees.
(*c*) for a certificate under Part X of the Indian Succession Act, 1925, or Bombay Regulation VIII of 1827;	When it exceeds five thousand rupees.	Ten rupees.
(*d*) for opinion or advice or for discharge from a Trust, or for appointment of new Trustees, under sections 34, 72, 73 or 74 of the Indian Trusts Act, 1882;	..	Ten rupees.
(*e*) for the winding up of a Company, under section 166 of the Indian Companies Act, 1913;	..	Ten rupees.
(*f*) under R. 58 of Order XXI of the Code of Civil Procedure, 1908, regarding a claim to attached property.	When the amount or value of the property exceeds five hundred rupees.	Ten rupees.
19. Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908.	..	Twenty rupees.
20. Every petition under the Indian	..	Thirty rupees.

Number.		Proper Fee.
Divorce Act, 1869, except petitions under section 44 of that Act and every memorandum of appeal under section 55 of that Act.		
21. Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865.	..	Thirty rupees.

VI.—THE CENTRAL PROVINCES COURT-FEES ACT (I OF 1923).

An Act to amend the Court-Fees Act, 1870, with reference to the scale of Court-fees in the Central Provinces.

WHEREAS it is necessary to revise the scale of Court-fees for the Central Provinces, by amendment of the Court-Fees Act, 1870, in its application to the Central Provinces, in the manner hereinafter appearing:

It is hereby enacted as follows:—

1. (1) This Act may be called THE CENTRAL PROVINCES COURT-FEES ACT, 1923.

(2) It shall come into force on such date as the Local Government may, by notification, appoint in this behalf and shall remain in force to the 31st day of March, 1926.

2. The Court-Fees Act, 1870, as amended by subsequent legislation, shall be amended in its application to the Central Provinces, in the manner hereinafter provided.

3. (1) In clause (*a*) of paragraph V of section 7, between the words "or" and "forms part" in line 4, the words "where the land" shall be inserted

(2) In clause (*b*) of the same paragraph, between the words "or" and "forms part," in line 3, the words "where the land" shall be inserted.

(3) In clause (*b*), paragraph V of the section 7 of the said Act, for the word "five" the words "twelve and a half" shall be substituted.

4. For paragraph IX of section 7, the following shall be substituted, namely:—

"*ix* (*a*) In suits against a mortgagee for the recovery of the property mortgaged,—

according to the principal money expressed to be secured by the instrument of mortgage;

(*b*) in suits by a mortgagee to foreclose the mortgage—

according to the amount claimed as due at the date of presenting the plaint."

5. In paragraph XI of section 7 of the said Act, before the words "the amount" the word "twice" shall be inserted.

6. In section 18 of the said Act, for the words "a fee of eight annas" the words "a fee of one rupee" shall be substituted.

7. (1) From section 19 of the said Act, paragraphs III and XII shall be deleted.

(2) In paragraph IX of the said section, the words "or the ascertainment of rights thereto or interests therein" shall be omitted.

8. (1) For the second and third columns of Article 1 in the First Schedule to the said Act the following shall be substituted, namely:—

"When the amount or value of the subject-matter in dispute does not exceed Rs. 100.	Seven and a half per centum of such amount or value.
When such amount or value exceeds Rs. 100, but does not exceed Rs. 1,000.	Ten per centum of such amount or value.
When such amount or value exceeds Rs. 1,000, but does not exceed Rs. 5,000.	Rs. 100 *plus* seven and a half per centum of the amount or value in excess of Rs. 1,000.
When such amount or value exceeds Rs. 10,000, but does not exceed Rs. 10,000.	Rs. 400 *plus* six per centum of the amount or value in excess of Rs. 5,000.
When such amount or value exceeds Rs. 10,000, bu tdoes not exceed Rs. 20,000.	Rs. 700 *plus* four and a half per centum of the amount or value in excess of Rs. 10,000.
When such amount or value exceeds Rs. 20,000, but does not exceed Rs. 50,000.	Rs. 1,150 *plus* three per centum of the amount or value in excess of Rs. 20,000.
When such amount or value exceeds Rs. 50,000, but does not exceed Rs. 1,00,000.	Rs. 2,050 *plus* two per centum of the amount or value in excess of Rs. 50,000.
When such amount or value exceeds Rs. 1,00,000.	Rs. 3,050 *plus* one per centum of the amount or value in excess of Rs. 1,00,000.

Provided that—

(*a*) the minimum fee shall be one rupee;

(*b*) the maximum fee shall be Rs. 5,000; and

(*c*) fractions of an anna shall be neglected.

9. In the third column of Article 6 in the First Schedule to the said Act,—

(*a*) for the words "Four annas" opposite clause (*a*) in the first entry in the second column, the words "Six annas" shall be substituted; and

(*b*) for the words "Eight annas" opposite clause (*b*) in the first entry in the second column, the words "Twelve annas" shall be substituted.

10. For the entries above the proviso in the second column and for the entries in the third column in Article 11 in the First Schedule to the said Act, the following shall be substituted, namely:—

"When the amount or value of the property in respect of which the grant of probate or letters is made exceeds Rs. 1,000, but does not exceed Rs. 5,000.	Two per centum of such amount or value.
When such amount or value exceeds Rs. 5,000, but does not exceed Rs. 10,000.	Rs. 100 *plus* two and a half per centum of the amount or value in excess of Rs. 5,000.
When such amount or value exceeds Rs. 10,000.	Rs. 250 *plus* three per centum of the amount or value in excess of Rs. 10,000."

11. For the entry in the second column of Article 12 in the First Schedule to the said Act, and for the first paragraph in the third column of the said Article, the following shall be substituted, namely:—

"When the amount or value of any debt or security specified in the certificate under section 8 of the Act exceeds Rs. 1,000, but does not exceed Rs. 5,000.	Two per centum of such amount or value, and three per centum of the amount or value of any debt or security to which the certificate is extended under section 10 of the Act.
When such amount or value exceeds Rs. 5,000, but does not exceed Rs. 10,000.	Rs. 100 *plus* two and a half per centum of the amount or value in excess of Rs. 5,000 and four and a half per centum of the amount or value of the debt or security to which the certificate is extended under section 10 of the Act.
When such amount or value exceeds Rs. 10,000.	Rs. 250 *plus* three per centum of the amount or value in excess of Rs. 10,000 and seven and a half per centum of the amount or value of any debt or security to which the certificate is extended under section 10 of the Act."

12. The table of rates of *ad valorem* fees leviable on the institution of suits at the end of the First Schedule to the said Act, shall be deleted.

13. In the third column in Article 1 in the Second Schedule to the said Act,—

(1) for the words "One anna" opposite clause (*a*) in the second column, the words "Two annas" shall be substituted; and

(2) for the words "Eight annas" opposite clause (*b*) in the second column, the following shall be substituted, namely:—

"In the case of a criminal complaint, one rupee, and in other cases, twelve annas."

14. For clauses (*c*) and (*d*) in the second column of Article 1 in the Second Schedule to the said Act, and for the entries opposite these clauses in the third column, the following shall be substituted, namely:—

"(*c*) When presented to a Commissioner of Revenue or to any chief officer charged with the executive administration of a Division and not otherwise provided for by this Act ..	Two rupees.
(*d*) When presented to a Chief Controlling Revenue Authority or Executive Authority and not otherwise provided for by this Act ..	Four rupees.
(*e*) When presented to the Court of the Judicial Commissioner—	

(*i*) otherwise than under section 25 of the Provincial Small Causes Courts Act, 1887, or section 115 of the Code of Civil Procedure, 1908 ..	Two rupees.
(*ii*) under section 25 of the Provincial Small Causes Courts Act, 1887 ..	Three rupees.
(*iii*) under section 115 of the Code of Civil Procedure, 1908, and the value of the suit to which the order or decree relates does not exceed Rs. 1,000 ..	Five rupees.
the value of the suit exceeds Rs. 1,000 ..	Ten rupees."

15. In the third column in Article 10, in the Second Schedule to the said Act, for the words "One rupee" opposite clause (*b*) in the second column the words "One rupee eight annas" shall be substituted.

16. In the third column in Article 11 in the Second Schedule to the said Act,—

(1) for the words "Eight annas" opposite clause (*a*) in the second column the words "Two rupees" shall be substituted; and

(2) for the words "Two rupees" opposite clause (*b*) in the second column, the words "Four rupees" shall be substituted.

17. (1) The words "Ten rupees" in the third column, opposite Article 17 in the Second Schedule to the said Act, and the bracket opposite that Article in the second column, shall be omitted.

(2) In the third column, opposite the said Article:—

(*a*) opposite entries (*i*), (*ii*), (*iii*), (*iv*) and (*vi*), the words "Fifteen rupees" shall be inserted; and

(*b*) opposite entry (*b*) the words "Twenty rupees" shall be inserted.

18. After Article 21 in the Second Schedule to the said Act, the following Article shall be inserted, namely:—

"22. Application for imperfect partition of a mahal under section 16 of the Central Provinces Land Revenue Act, 1917.	Five rupees."

19. Nothing in this Act shall apply to any probate, letters of administration or certificate in respect of which the fees payable under the law for the time being in force has been paid prior to the commencement of this Act, but which have not been issued.

VII.—MADRAS ACT NO. V OF 1922.

Passed by the Legislative Council of Madras.

[Received the assent of the Governor on the 30th March, 1922 and that of the Governor-General on the 17th April, 1922; the assent of the Governor-General was first published in the *Fort St. George Gazette* of the 18th April, 1922.]

An Act to amend the Court-Fees Act, 1870.

WHEREAS it is expedient to amend the Court-Fees Act, 1870, in its application to the Presidency of Madras;

It is hereby enacted as follows:—

1. (*a*) This Act may be called THE MADRAS COURT-FEES (AMENDMENT) ACT, 1922.

(*b*) It extends to the whole of the Presidency of Madras.

2. (1) In this Act "the principal Act" shall mean "the Court-Fees Act, 1870".

(2) In this Act and in the principal Act, unless there is anything repugnant in the subject or context, "Memorandum of appeal" shall include memorandum of cross-objection.

3. In the second paragraph of section 5 of the principal Act, the words "Registrar" and "Chief Judge" shall be substituted for "clerk of the Court" and "first Judge" respectively.

4. In section 7 of the principal Act the words "except suits for relief under section 14 of the Religious Endowments Act, 1863, or under section 91 or section 92 of the Code of Civil Procedure, 1908," shall be added between the words "mentioned" and "shall".

5. In section 7 (*ii*) of the principal Act, after the words "shall be deemed to be" the words "in suits for maintenance, the amount claimed to be payable for one year and in other suits" shall be added.

6. The following shall be added after the words "Memorandum of appeal" in section 7, paragraph (*iv*), of the principal Act:—

"Provided that in suits coming under sub-clause (*c*), in cases where the relief sought is with reference to any immoveable property, such valuation shall not be less than half the value of the immoveable property calculated in the manner provided for by paragraph (*v*) of this section."

7. In section 7 of the principal Act between paragraphs (*iv*) and (*v*) the following paragraph shall be added as (*iv-A*):—

"In a suit for cancellation of a decree for money or other property having a money value, or other document securing money or other property having such value,

according to the value of the subject-matter of the suit, and such value shall be deemed to be—

if the whole decree or other document is sought to be cancelled, the amount or the value of the property for which the decree was passed or the other document executed,

if a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property."

8. In section 7 (*v*) of the principal Act—

in (*a*) for the word "ten" the word "twenty" shall be substituted;

in (*b*) for the word "five" the word "ten" shall be substituted;

and after clause (*d*) the following proviso shall be substituted for the existing proviso:—

"Provided that if rules are framed under section 3 of the Suits Valuation Act, 1887, for determining the value of land for the purposes of jurisdiction, the value so determined shall be deemed to be the value of the land for the purposes of this paragraph."

9. For the second paragraph of section 11 of the principal Act, the following paragraphs shall be substituted:—

"Where a decree directs an inquiry as to mesne profits which have accrued on the property during a period prior to the institution of the suit, if the profits ascertained on such inquiry exceed the profits claimed, no final decree shall be passed till the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the claim for the excess shall be dismissed, unless the Court, for sufficient cause, extends the time for payment.

"Where a decree directs an inquiry as to mesne profits from the institution of the suit, and a final decree is passed in accordance with the result of such inquiry, the decree shall not be executed until such fee is paid as would have been payable on the amount claimed in execution if a separate suit had been instituted therefor."

10. In section 18 of the principal Act, for the words "eight annas" the words "one rupee" shall be substituted.

11. For Schedules I and II of the principal Act, the following schedules shall be substituted:—

SCHEDULE I.

Ad valorem FEES.

Number.		Proper Fee.
1. *Plaint, or written statement, pleading, a set-off or counter-claim or memorandum	When the amount or value of the subject-matter in dispute does not exceed five rupees.	Eight annas.

*To ascertain the proper fee leviable on the institution of a suit, *see* the Table annexed to this schedule.

Number.		Proper Fee.
of appeal (not otherwise provided for in this Act) presented to any Civil or Revenue Court except those mentioned in section 3.	When such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees.	Nine annas.
	When such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees.	One rupee two annas.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to five thousand rupees.	Seven rupees eight annas.
	When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees.	Fifteen rupees.
	When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees.	Twenty-two rupees eight annas.
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees.	Thirty rupees.
	When such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees.	Thirty rupees.
	When such amount or value exceeds fiftythousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees.	Thirty rupees.

Number.		Proper Fee.
2. *Plaint, or written statement, pleading, a set-off or counter-claim presented to a Court outside the Presidency Town in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter does not exceed Rs. 500.	When the amount or value of the subject-matter in dispute does not exceed five rupees.	Six annas.
	When such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees up to one hundred rupees.	Six annas.
	When such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees up to five hundred rupees.	Twelve annas.
3. Plaint in a suit for possession under [the Specific Relief Act, 1877, section 9.]	..	An amount of one-half the scale of fee prescribed in Article 1 above.
4. Application for review of judgment, if presented on or after the ninetieth day from the date of the decree.	..	The fee leviable on the plaint or memorandum of appeal.
5. Application for review of judgment, if presented before the ninetieth day from the date of the decree.	..	One-half of the fee leviable on the plaint or memorandum of appeal.
6. Copy or translation of a judgment or order not being or having the force of a decree.	When such judgment or order is passed by any Civil Court other than a High Court, or by the presiding officer of any Revenue Court or Office, or by any other Judicial or Executive Authority—	
	(*a*) If the amount or value of the subject-matter is fifty or less than fifty rupees.	Six annas.
	(*b*) If such amount or value exceeds fifty rupees.	Twelve annas.
	When such judgment or order is passed by a High Court.	One rupee eight annas.
6-A. Copy or translation of a judgment or order of a Criminal Court.	..	Eight annas.
7. Copy of a decree or order having the force of a decree.	When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court—	

*To ascertain the proper fee leviable on the institution of a suit, *see* the Table annexed to this schedule.

Number.		Proper Fee.
	(*a*) If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees.	Eight annas.
	(*b*) If such amount or value exceeds fifty rupees.	One rupee.
	When such decree or order is made by a High Court.	Four rupees.
8. Copy of any document liable to stamp-duty under the Indian Stamp Act, 1899, when left by any party to a suit or proceeding in place of the original withdrawn.	(*a*) When the stamp-duty chargeable on the original does not exceed eight annas.	The amount of the duty chargeable on the original.
	(*b*) In any other case.	Eight annas.
9. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report or the like, taken out of any Civil or Criminal or Revenue Court or Office, or from the office of any chief officer charged with the executive administration of a Division.	For every three hundred and sixty words or fraction of three hundred and sixty words.	Eight annas.
10. [*Repealed by the Guardians and Wards Act*, 1890 (*VIII of* 1890.)]		
11. Probate of a will or letters of administration with or without will annexed.	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees, but does not exceed five thousand rupees.	Two per centum on such amount or value.
	When such amount or value exceeds five thousand rupees.	Three per centum on such amount or value.
	Provided that, when after the grant of a certificate under the Succession Certificate Act, 1889, or under the Regulation of the Bombay Code, No. VIII of 1827, in respect of any property	

Number.		Proper Fee.
	included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.	
12. Certificate under the Succession Certificate Act, 1889.	When the amount or value of any debt or security specified in the certificate under section 8 of the Act does not exceed five thousand rupees.	Two per centum on such amount or value, and three per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act.
	When such amount or value exceeds five thousand rupees.	Three per centum on such amount or value, and four and a half per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act. NOTE.—(1) The amount of a debt is its amount, including interest, on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained. (2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act; and where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market

Number.		Proper Fee.
		value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.

SCHEDULE I.

TABLE OF RATES OF *Ad valorem* FEES LEVIABLE.

(*a*) On plaints, etc., mentioned in Article 1 of this Schedule.

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
..	5	0 8	250	260	29 3
5	10	1 1	260	270	30 5
10	15	1 10	270	280	31 7
15	20	2 3	280	290	32 9
20	25	2 12	290	300	33 11
25	30	3 5	300	310	34 13
30	35	3 14	310	320	35 15
35	40	4 7	320	330	37 1
40	45	5 0	330	340	38 3
45	50	5 9	340	350	39 5
50	55	6 2	350	360	40 7
55	60	6 11	360	370	41 9
60	65	7 4	370	380	42 11
65	70	7 13	380	390	43 13
70	75	8 6	390	400	44 15
75	80	8 15	400	410	46 1
80	85	9 8	410	420	47 3
85	90	10 1	420	430	48 5
90	95	10 10	430	440	49 7
95	100	11 3	440	450	50 9
100	110	12 5	450	460	51 11
110	120	13 7	460	470	52 13
120	130	14 9	470	480	53 15
130	140	15 11	480	490	55 1
140	150	16 13	490	500	56 3
150	160	17 15	500	510	57 5
160	170	19 1	510	520	58 7
170	180	20 3	520	530	59 9
180	190	21 5	530	540	60 11
190	200	22 7	540	550	61 13
200	210	23 9	550	560	62 15
210	220	24 11	560	570	64 1
220	230	25 13	570	580	65 3
230	240	26 15	580	590	66 5
240	250	28 1	590	600	67 7

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
600	610	68 9	2,300	2,400	217 7
610	620	69 11	2,400	2,500	224 15
620	630	70 13	2,500	2,600	232 7
630	640	71 15	2,600	2,700	239 15
640	650	73 1	2,700	2,800	247 7
650	660	74 3	2,800	2,900	254 15
660	670	75 5	2,900	3,000	262 7
670	680	76 7	3,000	3,100	269 15
680	690	77 9	3,100	3,200	277 7
690	700	78 11	3,200	3,300	284 15
700	710	79 13	3,300	3,400	292 7
710	720	80 15	3,400	3,500	299 15
720	730	82 1	3,500	3,600	307 7
730	740	83 3	3,600	3,700	314 15
740	750	84 5	3,700	3,800	322 7
750	760	85 7	3,800	3,900	329 15
760	770	86 9	3,900	4,000	337 7
770	780	87 11	4,000	4,100	344 15
780	790	88 13	4,100	4,200	352 7
790	800	89 15	4,200	4,300	359 15
800	810	91 1	4,300	4,400	367 7
810	820	92 3	4,400	4,500	374 15
820	830	93 5	4,500	4,600	382 7
830	840	94 7	4,600	4,700	389 15
840	850	95 9	4,700	4,800	397 7
850	860	96 11	4,800	4,900	404 15
860	870	97 13	4,900	5,000	412 7
870	880	98 15	5,000	5,250	427 7
880	890	100 1	5,250	5,500	442 7
890	900	101 3	5,500	5,750	457 7
900	910	102 5	5,750	6,000	472 7
910	920	103 7	6,000	6,250	487 7
920	930	104 9	6,250	6,500	502 7
930	940	105 11	6,500	6,750	517 7
940	950	106 13	6,750	7,000	532 7
950	960	107 15	7,000	7,250	547 7
960	970	109 1	7,250	7,500	562 7
970	980	110 3	7,500	7,750	577 7
980	990	111 5	7,750	8,000	592 7
990	1,000	112 7	8,000	8,250	607 7
1,000	1,100	119 15	8,250	8,500	622 7
1,100	1,200	127 7	8,500	8,750	637 7
1,200	1,300	134 15	8,750	9,000	652 7
1,300	1,400	142 7	9,000	9,250	667 7
1,400	1,500	149 15	9,250	9,500	682 7
1,500	1,600	157 7	9,500	9,750	697 7
1,600	1,700	164 15	9,750	10,000	712 7
1,700	1,800	172 7	10,000	10,500	734 15
1,800	1,900	179 15	10,500	11,000	757 7
1,900	2,000	187 7	11,000	11,500	779 15
2,000	2,100	194 15	11,500	12,000	802 7
2,100	2,200	202 7	12,000	12,500	824 15
2,200	2,300	209 15	12,500	13,000	847 7

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
13,000	13,500	869 15	23,000	24,000	1,282 7
13,500	14,000	892 7	24,000	25,000	1,312 7
14,000	14,500	914 15	25,000	26,000	1,342 7
14,500	15,000	937 7	26,000	27,000	1,372 7
15,000	15,500	959 15	27,000	28,000	1,402 7
15,500	16,000	982 7	28,000	29,000	1,432 7
16,000	16,500	1,004 15	29,000	30,000	1,462 7
16,500	17,000	1,0 7 7	30,000	32,000	1,492 7
17,000	17,500	1,0 9 15	32,000	34,000	1,522 7
17,500	18,000	1,072 7	34,000	36,000	1,552 7
18,000	18,500	1,094 15	36,000	38 000	1,582 7
18,500	19,000	1,117 7	38,000	40,000	1,612 7
19,000	19,500	1,139 15	40,000	42 000	1,642 7
19,500	20,000	1,162 7	42,000	44 000	1,672 7
20,000	21,000	1,192 7	44,000	46 000	1,702 7
21,000	22,000	1,222 7	46,000	48 000	1,732 7
22,000	23,000	1,252 7	48,000	50 000	1,762 7

When the amount or value of the subject-matter exceeds Rs. 50,000, for every five thousand rupees or part thereof in excess of fifty thousand rupees— thirty rupees.

(*b*) On plaints, etc., mentioned in Article 2 of this Schedule.

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
..	5	0 6	85	90	6 12
5	10	0 12	90	95	7 2
10	15	1 2	95	100	7 8
15	20	1 8	100	110	8 4
20	25	1 14	110	120	9 0
25	30	2 4	120	130	9 12
30	35	2 10	130	140	10 8
35	40	3 0	140	150	11 4
40	45	3 6	150	160	12 0
45	50	3 12	160	170	12 12
50	55	4 2	170	180	13 8
55	60	4 8	180	190	14 4
60	65	4 14	190	200	15 0
65	70	5 4	200	210	15 12
70	75	5 10	210	220	16 8
75	80	6 0	220	230	17 4
80	85	6 6	230	240	18 0

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
240	250	18 12	370	380	28 8
250	260	19 8	380	390	29 4
260	270	20 4	390	400	30 0
270	280	21 0	400	410	30 12
280	290	21 12	410	420	31 8
290	300	22 8	420	430	32 4
300	310	23 4	430	440	33 0
310	320	24 0	440	450	33 12
320	330	24 12	450	460	34 8
330	340	25 8	460	470	35 4
340	350	26 4	470	480	36 0
350	360	27 0	480	490	36 12
360	370	27 12	490	500	37 8

SCHEDULE II.

FIXED FEES.

Number.		Proper Fee.
1. Application or petition.	(*a*) When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings;	One anna.
	or when presented to any officer of land-revenue by any person holding temporarily settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement;	Two annas.
	or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement;	One anna.
	or when presented to any Civil Court other than a principal Civil Court of original juris-	Two annas.

Number.		Proper Fee.
1. Application or petition—*contd.*	diction, or to any Court of Small Causes constituted under Act No. IX of 1887, or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees;	
	or when presented to any Civil, Criminal or Revenue Court, or to any Board or executive officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, Board or officer, or of any other document on record in such Court or Office.	Two annas.
	(*b*) When containing a complaint or charge of any offence other than an offence for which police-officers may, under the Criminal Procedure Code, arrest without warrant, and presented to any Criminal Court;	In the case of a criminal complaint one rupee and in other cases twelve annas.
	or when presented to a Civil, Criminal or Revenue Court, or to a Collector, or any Revenue officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act;	In the case of a criminal complaint one rupee and in other cases twelve annas.
	or to deposit in Court revenue or rent;	Eight annas.
	or for determination by a Court of the amount of compensation to be paid by landlord to his tenant.	
	(*c*) When presented to a Chief Commissioner or other Chief Controlling Revenue or Executive authority, or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a Division and not otherwise provided for by this Act.	One rupee eight annas.
	(*d*) (i) When presented to a High Court under section 115 of the Code of Civil Procedure, 1908, for revision an order—	

Number.		Proper Fee.
1. Application or petition—*concld.*	(*a*) When the value of the suit or proceeding to which the order relates does not exceed thousand rupees;	Five rupees.
	(*b*) when the value of the suit or proceeding exceeds thousand rupees.	Ten rupees.
	(ii) When presented to a High Court otherwise than under that section.	Two rupees.
1-A. Application to any Civil Court that records may be called for from another Court.	When the Court grants the application and is of opinion that the transmission of such records involves the use of the post.	Twelve annas in addition to any fee levied on the application under clause (*a*), clause (*b*) or clause (*d*) of article 1 of this schedule.
2. Application for leave to sue as a pauper.	..	Eight annas.
3. Application for leave to appeal as a pauper.	(*a*) When presented to a District Court or a Sub-Court.	One rupee.
	(*b*) When presented to a Commissioner or a High Court.	Two rupees.
4.	*Omitted.*	
5. Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy.	..	Eight annas.
6. Bail-bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1898, or the Code of Civil Procedure, 1908, and not otherwise provided for in this Act.	..	Eight annas.
7. Undertaking under section 49 of the Indian Divorce Act, 1869.	..	Eight annas.
[8. *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*]		

Number.		Proper Fee.
9. [*Rep. by Act XII of 1891.*]		
10. Mukhtarnama, Vakalatnama or any paper signed by an Advocate signifying or intimating that he is retained for a party.	When presented for the conduct of any one case—	
	(*a*) to any Civil or Criminal Court other than a High Court, or to any Revenue Court, or to any Collector or Magistrate, or other Executive Officer, except those mentioned in clauses (*b*) and (*c*) of this number;	One rupee.
	(*b*) to a Commissioner of Revenue, Circuit or Customs or to any officer charged with the executive administration of a Division, not being the Chief Revenue or Executive Authority;	One rupee eight annas.
	(*c*) to a High Court, Chief Commissioner, Board of Revenue or other Chief Controlling Revenue, or Executive Authority.	Three rupees.
11. Memorandum of appeal when the appeal is from an order inclusive of an order determining any question under section 47 or section 144 of the Code of Civil Procedure, 1908, and is presented.	(*a*) to any Civil Court other than a High Court or to any Revenue Court or Executive Officer other than the High Court or Chief Controlling Revenue or Executive Authority;	One rupee.
	(*b*) to a High Court or Chief Commissioner, or other Chief Controlling Executive or Revenue Authority.	Two rupees.
12. Caveat ..	..	Ten rupees.
13.	*Omitted.*	
14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866.	..	Five rupees.
15. [*Rep. by Act V of 1908.*]		
16. [*Rep. by Act VI of 1889, s. 18 (1).*]		
17. Plaint or memorandum of appeal in a suit—		

Number.		Proper Fee.
i. to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court:	..	Fifteen rupees.
ii. to alter or cancel any entry in a register of the names of Proprietors of revenue-paying estates:	..	Fifteen rupees.
iii. for relief under section 14 of the Religious Endowments Act, 1863, or under section 91 or section 92 of the Code of Civil Procedure, 1908.	..	Fifty rupees.
17-A. Plaint or memorandum of appeal in a suit—	When the plaint is presented to or the memorandum of appeal is against the decree of—	
i. to obtain a declaratory decree where no consequential relief is prayed;	a District Munsif's Court or the City Civil Court,	Fifteen rupees.
ii. to set aside an award; iii. to obtain a declaration that an alleged adoption is invalid or never in fact took place or to obtain a declaration that an adoption is valid.	a District Court or a Sub-Court.	Hundred rupees if the value for purposes of jurisdistion is less than ten thousand rupees; five hundred rupees if such value is ten thousand rupees or upwards.
17-B. Plaint or memorandum of appeal in every suit where it is not possible to estimate at a money value the subject-matter in dispute and which is not otherwise provided for by this Act.	When the plaint is presented to or the memorandum of appeal is against the decree of—	
	a Revenue Court,	Ten rupees.
	a District Munsif's Court or the City Civil Court,	Fifteen rupees.
	a District Court or a Sub-Court.	One hundred rupees.
18. Applications under section 17 or section 20 of the 2nd	When presented to a District Munsif's Court or the City Civil Court.	Fifteen rupees.

Number.		Proper Fee.
schedule of the Code of Civil Procedure, 1908.		
19. Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908.	When presented to a District Court or a Sub-Court.	One hundred rupees.
20. Every petition under the Indian Divorce Act, 1869, except petitions under section 44 of the same Act, and every memorandum of appeal under section 55 of the same Act.	..	Twenty rupees.
21. Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865.	..	Twenty rupees.

VIII.—THE MADRAS HINDU RELIGIOUS ENDOWMENTS ACT (II OF 1927).

Sec. 81. (1) Notwithstanding anything contained in the first or second Schedule to the Madras Court-Fees Amendment Act, 1922, the proper fees for the documents described in columns 1 and 2 of Schedule II shall be the fees indicated in column 3 thereof.

(2) The provisions of the Madras Court-Fees Amendment Act, 1922, shall otherwise, so far as may be, apply to the documents mentioned in Schedule II.

SCHEDULE II.

Section. (1)	Description of the document. (2)	Proper fee. (3)
43 (2)	Appeal to the committee by any office-holder or servant against an order of punishment by a trustee under sub-section (1).	Two rupees.
43 (3)	Further appeal to the Board by a hereditary office-holder or servant against an order of the committee on appeal under sub-section (2).	Two rupees.
43 (4)	Appeal to the Board by an office-holder or servant of an excepted temple.	Two rupees.

Section. (1)	Description of the document. (2)	Proper fee. (3)
44	Application to Court by the trustee to recover the amount from the person in possession or by the person in possession from the person responsible in law.	The fee leviable on a plaint for the amount claimed under the Madras Court-Fees Act, 1922.
53 (3)	Appeal to the Board or application to Court against an order of suspension, dismissal or removal by the committee of a trustee.	Twenty-five rupees
55 (4)	Appeal to the Board by a trustee or person having interest against the order of a committee under sub-section (3) fixing standard scales of expenditure.	Twenty rupees.
55 (4)	Suit under the sub-section ..	Fifty rupees.
57 (3)	Suit under the sub-section ..	Fifty rupees.
57 (4)	Suit under the sub-section ..	Fifty rupees.
62	Application to the Board by not less than twenty persons having interest for framing a scheme of administration for a math or excepted temple.	Fifty rupees.
63 (4)	Suit under the sub-section ..	Fifty rupees.
65	Suit under the sub-section ..	Fifty rupees.
67 (4)	Suit under the sub-section ..	Fifty rupees.
67 (5)	Suit under the sub-section ..	Fifty rupees.
70 (2)	Application to Court to recover from the funds of the endowment the contribution leviable by the Board or committee.	Two rupees.
73	Suits under the section ..	Fifty rupees.
76 (2)	Application to the Court by a trustee of a math or temple or any person having interest for modifying or cancelling any order of the Board sanctioning alienation of immoveable property under sub-section (1).	The fee leviable on a plaint under article 17, Schedule II of the Madras Court-Fees Amendment Act, 1922.
77 (2)	Application to aCourt to modify or set aside an order of the Board under sub-section (1) allocating any endowment, property or the income therefrom to religious and secular purposes.	Twenty rupees.
78	Application to theCourt for delivery of possession of endowments to a trustee appointed by the committee.	Two rupees.
84 (2)	Application to modify or set aside the decision of the Board under sub-section (1).	The fee leviable on a plaint under article 17, Schedule II of the Madras Court-Fees Amendment Act, 1922.

* * * *

Grant of Copies.

Sec. 82. The President of a Board or Committee may grant copies of proceedings or other records of his office on payment of such fees and subject to such conditions as may be determined by the Board.

IX.—THE MADRAS CIVIL COURTS ACT (III OF 1873).

PART I.

PRELIMINARY.

1. This Act may be called THE MADRAS CIVIL COURTS ACT (III of 1873).

It extends to all the territories for the time being under the government of the Governor of Fort St. George in Council except the tracts respectively under the jurisdiction of the Agents for Ganjam and Vizagapatam.

* * * *

PART II.

JURISDICTION.

Local limits of jurisdiction of District Court or Subordinate Judge.

10. The Local Government shall fix, and may from time to time vary the local limits of the jurisdiction of any District Court or Subordinate Judge's Court under this Act.

* * * *

Local jurisdiction of District Munsifs.

11. The High Court shall fix and may from time to time modify the local jurisdiction of District Munsifs.

Jurisdiction of District Judge or Subordinate Judge in original suits.

12. The jurisdiction of a District Judge or a Subordinate Judge extends, subject to the rules contained in the Code of Civil Procedure, to all original suits and proceedings of a civil nature.

Jurisdiction of District Munsifs.

The jurisdiction of a District Munsif extends to all like suits and proceedings not otherwise exempted from his cognizance, of which the amount or value of the subject-matter does not exceed three thousand rupees.*

Appeals from decrees of District Courts.

13. Regular or special appeals shall, when such appeals are allowed by law, lie from the decrees and orders of a District Court to the High Court.

Appellate jurisdiction of District Court.

Appeals from the decrees and orders of Subordinate Judges and District Munsifs shall, when such appeals are allowed by law, lie to the District Court except when the amount or value of the subject-matter of the suit exceeds rupees five thousand, in which case the appeal shall lie to the High Court.

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*The words "three thousand rupees" were substituted for the words "two thousand five hundred" by Madras Act III of 1916.

Appellate jurisdiction of Subordinate Judge.

Provided that where a Subordinate Judge's Court is established in any District in a place remote from the station of the District Court, the High Court may, with the previous sanction of the Local Government, direct that appeals from the decrees or orders of District Munsifs within the local limits of the jurisdiction of such Subordinate Judge be preferred in the Court of the latter.

Disposal of appeal by District Judge.

Provided that the District Judge may remove to his own Court, from time to time, appeals so preferred and dispose of them himself, or may subject to the orders of the High Court refer any appeals from the decrees and orders of the District Munsifs, preferred in the District Court to any Subordinate Judge within the District.

Valuating suits for immoveable property.

14. When the subject-matter of a suit or proceedings is land, a house or a garden, its value shall for the purposes of the jurisdiction conferred by this Act be fixed in a manner provided by the Court-Fees Act, 1870, S. 7, cl. 5.

* * * *

PART III.

* * * *

Investiture of Subordinate Judge with Small Cause jurisdiction.

28. The High Court* may by notification in the official Gazette invest within such local limits as it shall from time to time appoint any (District or) Subordinate Judge with the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts up to the amount of rupees one thousand.†

Investiture of District Munsif with similar jurisdiction.

and any District Munsif with the same jurisdiction up to the amount of rupees three hundred‡ and may by like notification, wherever it thinks fit, withdraw such jurisdiction from the District or Subordinate Judge or Munsif so invested.

SMALL CAUSE JURISDICTION.

By virtue of powers conferred by S. 28 of the Madras Civil Courts Act (III of 1873), as amended by the Decentralization Act (IV of 1914), and further amended by the Madras Civil Courts (Second Amendment) Act (XVIII of 1926), the High Court is pleased to issue the following revised notification in supersession of the judicial notification, dated 18th March, 1873, published at p. 556 of the *Fort St. George Gazette*, dated 18th March, 1873, of the High Court notification, dated 1st March, 1915, published at p. 556, Part II of the *Fort St. George Gazette*, dated 9th March. 1915, and of the notification published at pp. 331-332, Part II of the *Fort St. George Gazette*, dated 13th February, 1917:—

1. All Subordinate Judges in the Presidency of Fort St. George shall have and exercise the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts up to the amount of one

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* By Act XVIII of 1926 the words "High Court" for the word "Local Government",

† the words "one thousand" for the words "five hundred",

‡ the words "three hundred" for "fifty", were substituted.

thousand rupees, and all District Munsifs within the Presidency of Fort St. George shall have and exercise the same jurisdiction up to the amount of one hundred rupees.

2. Those District Munsifs who have been specially empowered by the High Court to exercise extended Small Cause powers up to two hundred rupees and who at present are exercising the powers shall have and exercise such powers up to the amount of three hundred rupees.

3. Subordinate Judges and District Munsifs shall exercise the jurisdiction within the local limits of their jurisdiction as fixed by Ss. 10 and 11 of Act III of 1873 unless such Small Cause jurisdiction has been, or shall hereafter be, expressly withdrawn or modified by the High Court.

4. Where the Subordinate Judge and the District Munsif have concurrent jurisdiction in suits cognizable as Small Causes up to the amount of one hundred rupees, the events shall be guided in their procedure by S. 15 of the Code of Civil Procedure, Act V of 1908.

[*High Court notification, dated 23rd July,* 1926, *published at p.* 1041, *Pt. II of the* Fort St. George Gazette, *dated 3rd August,* 1926, *as amended by the corrigendum, dated 29th August,* 1926, *published at p.* 1196, *Pt. II of the* Fort St. George Gazette, *dated 7th September,* 1926 *Dis. No.* 1496|26.]

Exercise by Subordinate Judge of jurisdiction of District Judge in certain proceedings.

29. (1) The High Court may, by general or special order, authorise any Subordinate Judge to take cognizance of, or any District Judge to transfer to any Subordinate Judge under his control any proceedings under the Indian Succession Act, 1925, which cannot be disposed of by District Delegates.

(2) The District Judge may withdraw any such proceedings taken cognizance of by or transferred to a Subordinate Judge, and may either himself dispose of them or transfer them to a Court under his control competent to dispose of them.

(3) Notwithstanding anything contained in section 13, proceedings taken cognizance of by or transferred to a Subordinate Judge under the provisions of this section shall be disposed of by him subject to the law applicable to like proceedings when disposed of by the District Judge.

X.—THE MADRAS CITY CIVIL COURT ACT (VII OF 1892).

* * * *

Constitution of the City Court.

3. The Local Government may, by notification in the official Gazette, establish a Court to be called the Madras City Civil Court with jurisdiction to receive, try and dispose of all suits and other proceedings of a civil nature not exceeding two thousand five hundred rupees in value and arising within the City of Madras, except suits or proceedings which are cognizable,

(*a*) by the High Court, as a Court of Admiralty, or, Vice-Admiralty, or, as a Colonial Court of Admiralty, or, as a Court having testamentary, intestate or matrimonial jurisdiction, or

(*b*) by the Court for the relief of insolvent debtors, or

(*c*) by the Small Cause Court.

* * * *

Valuation of immoveable property for jurisdictional purposes.

9. When the subject-matter of any suit or other proceeding is land or a house or a garden, its value for the purposes of the jurisdiction con-

ferred on the City Court by this Act shall, subject to the other provisions of the Act, be fixed in manner provided by the Court-Fees Act (VII of 1870), S. 7, cl. (*v*).

Process fees.

10. Fees chargeable for serving or executing processes issued by the City Court or served or executed under its direction or control shall be such as the High Court may prescribe with the approval of the Governor of the Fort St. George in Council.

* * * *

Repayment of half fees on settlement before hearing.

13. Whenever any suit or proceeding in the City Court is settled by agreement of the parties before issues have been settled or any evidence recorded half the amount of institution fees paid by the plaintiff shall be repaid to him by the Court.

Allowance for fees paid in the City Court in cases removed to High Court.

14. When under section 13 of the Letters Patent for the High Court, dated the 28th day of December, 1865, or under section 25 of the Code of Civil Procedure (XIV of 1882) the High Court has removed for trial by itself any suit from the City Court, fees on the scale for the time being in force in the High Court as a Court of ordinary original jurisdiction shall be payable in that Court in respect of the suit and proceedings therein.

Provided that, in the levy of any such fees which, according to the practice of the Court are credited to the Government, credit shall be given to the plaintiff in the suit for any fee which in the City Civil Court he has already paid under the Court-Fees Act, 1870 (VII of 1870), on the plaint.

Appeals.

15. (1) The Court authorised to hear appeals from the City Court shall be the High Court.

(2) The period of limitation for an appeal from a decree or order of the City Court shall be the same as that provided by law for an appeal from a decree or order of the High Court in the exercise of its original jurisdiction.

Saving of original jurisdiction of High Court.

16. Nothing in this Act contained shall affect the original civil jurisdiction of the High Court.

Provided that—

(1) if any suit or other proceeding is instituted in the High Court which in the opinion of the Judge who tries the same (whose opinion shall be final) ought to have been instituted in the City Civil Court, no costs shall be allowed to a successful plaintiff, and a successful defendant shall be allowed his costs as between attorney and client;

(2) in any suit or other proceeding pending at any time in the High Court, any Judge of such Court may at any stage thereof make an order transferring the same to the City Civil Court if in his opinion such suit or proceeding is within the jurisdiction of that Court and should be tried therein;

(3) in any suit or other proceeding so transferred the Court-Fees Act, 1870 (VII of 1870) shall apply credit being given for any fees levied in the High Court.

* * * *

XI.—THE MADRAS CITY CIVIL COURT AND PRESIDENCY SMALL CAUSE COURTS (AMENDMENT) ACT (V OF 1916).

* * * *

Institution in the Madras City Civil Court of certain suits cognizable by the Madras Small Cause Court.

2. Notwithstanding anything contained in the Presidency Small Cause Courts Act, 1882 (XV of 1882) and the Madras City Civil Court Act, 1892, (VII of 1892) all suits cognizable by the Court of Small Causes of Madras whereof the amount or value of the subject-matter exceeds one thousand rupees may at the election of the plaintiff be instituted in the Madras City Civil Court which shall have jurisdiction to try and dispose of such suits according to the provisions of the Madras City Civil Court Act, 1892 (VII of 1892).

Removal of suits instituted in the Madras Presidency Small Cause Court to the High Court or to the Madras City Civil Court.

3. (1) Notwithstanding anything contained in the Presidency Small Cause Courts Act, 1882 (XV of 1882) and the Madras City Civil Court Act, 1892 (VII of 1892) where an application is made to the High Court of Judicature at Madras under section 39 (1) of the Presidency Small Cause Courts Act, 1882 (XV of 1882) in any suit referred to therein, the High Court may either remove the suits to its own file or transfer the same to the Madras City Civil Court.

(2) Where a suit is ordered to be transferred as aforesaid to the Madras City Civil Court the provisions of sub-sections (2), (3) and (4) of section 39 and of section 40 of the Presidency Small Cause Courts Act, 1882 (XV of 1882) shall *mutatis mutandis* and subject to the pecuniary limits of the jurisdiction of the Madras City Civil Court, apply.

XII.—PUNJAB ACT NO. VII OF 1922.

THE COURT-FEES (PUNJAB AMENDMENT) ACT, 1922.

As amended by Punjab Acts I and VI of 1926.

An Act to amend the Court-Fees Act, 1870, with reference to the scale of Court-fees in the Punjab.

WHEREAS it is necessary to revise the scale of Court-fees provided in the Court-Fees Act, 1870, in its application to the Punjab in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. (1) This Act may be called THE COURT-FEES (PUNJAB AMENDMENT) ACT, 1922.

(2) It extends to the Punjab.

(3) It shall come into force on such date as the Local Government may by notification appoint in this behalf.

2. (1) The Court-Fees Act, 1870, shall be amended in its application to the Punjab in the manner hereinafter provided.

(2) The sections and schedules hereinafter referred to by number mean the sections and schedules respectively so numbered in the Court-Fees Act, 1870, unless it shall appear to the contrary.

3. In section 4 the word "one" shall be substituted for the word "two" between the word "of" and the word "or".

4. In section 18 between the word "of" and the word "unless" for the words "eight annas" the words "one rupee" shall be substituted.

5. For Article 1 of Schedule I the following Article shall be substituted, namely:—

Number.		Proper Fee.
1. Plaint, written statement, pleading, a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) or of cross-objection presented to any Civil or Revenue Court except those mentioned in section 3.	When the amount or value of the subject-matter in dispute does not exceed five rupees.	Six annas.
	When such amount or value exceeds five rupees, but does not exceed five hundred rupees, for every five rupees or part thereof in excess of five rupees up to one hundred rupees.	Six annas.
	When such amount or value exceeds one hundred rupees, but does not exceed five hundred rupees, for every ten rupees or part thereof in excess of one hundred rupees up to five hundred rupees.	Twelve annas.
	When such amount or value exceeds five hundred rupees, for every ten rupees or part thereof up to one thousand rupees.	One rupee two annas
	When such amount or value exceeds one thousand rupees, for every one hundred rupees or part thereof in excess of one thousand rupees up to five thousand rupees.	Seven rupees eight annas.
	When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees or part thereof in excess of five thousand rupees up to ten thousand rupees.	Fifteen rupees.
	When such amount or value exceeds ten thousand rupees, for every five hundred rupees or part thereof in excess of ten thousand rupees up to twenty thousand rupees.	Twenty-two rupees eight annas.
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees or part thereof in excess of twenty thousand rupees up to thirty thousand rupees.	Thirty rupees.

Number.		Proper Fee.
	When such amount or value exceeds thirty thousand rupees, for every two thousand rupees or part thereof in excess of thirty thousand rupees up to fifty thousand rupees.	Thirty rupees.
	When such amount or value exceeds fifty thousand rupees, for every five thousand rupees or part thereof in excess of fifty thousand rupees.	Thirty rupees.

(2) The proviso, as to the maximum, after the ninth entry in the second column of the said Article in the same Schedule, shall be omitted.

6. Article 13 of Schedule I which was repealed by the Punjab Courts (Amendment) Act, 1912, in so far as it affected the Punjab is hereby re-enacted, save that for the words "Chief Court in the Punjab," the words "High Court of Judicature at Lahore," for the figures "70" the figures "44" and for the figures "1884" the figures "1918" shall be substituted; and the words and figures "as amended by the Punjab Courts Act, 1899" shall be omitted.

7. For the table of rates of *ad valorem* fees leviable on the institution of suits set forth at the end of Schedule I, the table set forth in the schedule to this Act shall be substituted.

8. In Article 1 of Schedule II—

(1) for the words "one anna" in the third column opposite clause (*a*) in the second column, the words "two annas" shall be substituted;

(2) for the words "eight annas" in the third column opposite cl. (*b*) in the second column, the words "one rupee" shall be substituted;

(3) for clause (*d*) in the second column and the corresponding entry in the third column shall be substituted the following clause and entries, namely:—

(*d*) When presented to the High Court	
(*i*) Under the Indian Companies Act, 1913, for winding up a Company	.. One hundred rupees.
(*ii*) Under the same Act for taking some other judicial action	.. Five rupees.
(*iii*) In all other cases	.. Two rupees.

9. In the third column of Articles 4, 5 and 7 respectively of Schedule II—

for the words "eight annas" the words "one rupee" shall be substituted.

10. In the third column of Art. 10, Schedule II—

for the words "eight annas" opposite clause (*a*) in the second column, the words "one rupee" shall be substituted.

11. In the third column of Art. 11 of Schedule II—

(1) for the words "eight annas" opposite clause (*a*) in the second column, the words "one rupee" shall be substituted.

(2) for the words "two rupees" opposite clause (*b*) in the second column, the words "four rupees" shall be substituted.

12. The following new article with the corresponding entry in the third column shall be added to the first column of Schedule II, namely:—

22. Plaint or memorandum of appeal in a suit by a reversioner under the Punjab Customary Law for a declaration in respect of an alienation of ancestral land	..	Twenty rupees.

SCHEDULE.

TABLE OF RATES OF *ad valorem* FEES LEVIABLE ON THE INSTITUTION OF SUITS.

(*See* Section 7.)

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee (Act VII of 1922) as amended.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee (Act VII of 1922) as amended.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
..	5	0 6	260	270	20 4
5	10	0 12	270	280	21 0
10	15	1 2	280	290	21 12
15	20	1 8	290	300	22 8
20	25	1 14	300	310	23 4
25	30	2 4	310	320	24 0
30	35	2 10	320	330	24 12
35	40	3 0	330	340	25 8
40	45	3 6	340	350	26 4
45	50	3 12	350	360	27 0
50	55	4 2	360	370	27 12
55	60	4 8	370	380	28 8
60	65	4 14	380	390	29 4
65	70	5 4	390	400	30 0
70	75	5 10	400	410	30 12
75	80	6 0	410	420	31 8
80	85	6 6	420	430	32 4
85	90	6 12	430	440	33 0
90	95	7 2	440	450	33 12
95	100	7 8	450	460	34 8
100	110	8 4	460	470	35 4
110	120	9 0	470	480	36 0
120	130	9 12	480	490	36 12
130	140	10 8	490	500	37 8
140	150	11 4	500	510	57 6
150	160	12 0	510	520	58 8
160	170	12 12	520	530	59 10
170	180	13 8	530	540	60 12
180	190	14 4	540	550	61 14
190	200	15 0	550	560	63 0
200	210	15 12	560	570	64 2
210	220	16 8	570	580	65 4
220	230	17 4	580	590	66 6
230	240	18 0	590	600	67 8
240	250	18 12	600	610	68 10
250	260	19 8	610	620	69 12

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee (Act VII of 1922) as amended.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee (Act VII of 1922) as amended.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
620	630	70 14	2,400	2,500	225 0
630	640	72 0	2,500	2,600	232 8
640	650	73 2	2,600	2,700	240 0
650	660	74 4	2,700	2,800	247 8
660	670	75 6	2,800	2,900	255 0
670	680	76 8	2,900	3,000	262 8
680	690	77 10	3,000	3,100	270 0
690	700	78 12	3,100	3,200	277 8
700	710	79 14	3,200	3,300	285 0
710	720	81 0	3,300	3,400	292 8
720	730	82 2	3,400	3,500	300 0
730	740	83 4	3,500	3,600	307 8
740	750	84 6	3,600	3,700	315 0
750	760	85 8	3,700	3,800	322 8
760	770	86 10	3,800	3,900	330 0
770	780	87 12	3,900	4,000	337 8
780	790	88 14	4,000	4,100	345 0
790	800	90 0	4,100	4,200	352 8
800	810	91 2	4,200	4,300	360 0
810	820	92 4	4,300	4,400	367 8
820	830	93 6	4,400	4,500	375 0
830	840	94 8	4,500	4,600	382 8
840	850	95 10	4,600	4,000	390 0
850	860	96 12	4,700	4,800	397 8
860	870	97 14	4,800	4,900	405 0
870	880	99 2	4,900	5,000	412 8
880	890	100 2	5,000	5,250	427 8
890	900	101 4	5,250	5,500	442 8
900	910	102 6	5,500	5,750	457 8
910	920	103 8	5,750	6,000	472 8
920	930	104 10	6,000	6,250	487 8
930	940	105 12	6,250	6,500	502 8
940	950	106 14	6,500	6,750	517 8
950	960	108 0	6,750	7,000	532 8
960	970	109 2	7,000	7,250	547 8
970	980	110 4	7,250	7,500	562 8
980	990	111 6	7,500	7,750	577 8
990	1,000	112 8	7,750	8,000	592 8
1,000	1,100	120 0	8,000	8,250	607 8
1,100	1,200	127 8	8,250	8,500	622 8
1,200	1,300	135 0	8,500	8,750	637 8
1,300	1,400	142 8	8,750	9,000	652 8
1,400	1,500	150 0	9,000	9,250	667 8
1,500	1,600	157 8	9,250	9,500	682 8
1,600	1,700	165 0	9,500	9,750	697 8
1,700	1,800	172 8	9,750	10,000	712 8
1,800	1,900	180 0	10,000	10,500	735 0
1,900	2,000	187 8	10,500	11,000	757 8
2,000	2,100	195 0	11,000	11,500	780 0
2,100	2,200	202 8	11,500	12,000	802 8
2,200	2,300	210 0	12,000	12,500	825 0
2,300	2,400	217 8			

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee (Act VII of 1922) as amended.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee (Act VII of 1922) as amended.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A
12,500	13,000	847 8	1,40,000	1,45,000	2,332 8
13,000	13,500	870 0	1,45,000	1,50,000	2,362 8
13,500	14,000	892 8	1,50,000	1,55,000	2,392 8
14,000	14.500	915 0	1,55,000	1,60,000	2,422 8
14,500	15,000	937 8	1,60,000	1,65,000	2,452 8
15,000	15,500	960 0	1,65,000	1,70,000	2,482 8
15,500	16,000	982 8	1,70,000	1,75,000	2,512 8
16,000	16,500	1,005 0	1,75,000	1,80,000	2,542 8
16,500	17,000	1,027 8	1,80,000	1,85.000	2,572 8
17,000	17,500	1,050 0	1,85,000	1,90,000	2,602 8
17,500	18,000	1.072 8	1,90.000	1,95,000	2,632 8
18,000	18,500	1,095 0	1,95,000	2,00.000	2,662 8
18,500	19,000	1,117 8	2,00,000	2,05,000	2,692 8
19,000	19,500	1,140 0	2,05,000	2,10,000	2,722 8
19,500	20,000	1,162 8	2,10,000	2,15,000	2,752 8
20,000	21,000	1,192 8	2,15,000	2,20,000	2,782 8
21,000	22,000	1,222 8	2,20,000	2,25,000	2,812 8
22,000	23.000	1,252 8	2.25,000	2,30,000	2,842 8
23,000	24,000	1,282 8	2,30,000	2,35.000	2.872 8
24,000	25.000	1,312 8	2,35,000	2,40.000	2,902 8
25,000	26,000	1,342 8	2,40,000	2,45,000	2,932 8
26,000	27,000	1,372 8	2,45,000	2,50,000	2,962 8
27,000	28,000	1,402 8	2,50,000	2,55,000	2,992 8
28,000	29,000	1,432 8	2,55,000	2,60,000	3,022 8
29,000	30,000	1,462 8	2,60,000	2,65,000	3,052 8
30,000	32,000	1,492 8	2,65,000	2,70.000	3,082 8
32,000	34,000	1,522 8	2,70,000	2,75,000	3,112 8
34,000	36,000	1,552 8	2,75,000	2,80,000	3,142 8
36,000	38,000	1,582 8	2,80,000	2,85.000	3,172 8
38,000	40,000	1,612 8	2,85,000	2,90,000	3,202 8
40,000	42,000	1,642 8	2,90,000	2,95,000	3,232 8
42,000	44,000	1,672 8	2,95,000	3,00,000	3,262 8
44,000	46,000	1,702 3	3,00,000	3,05,000	3,292 8
46,000	48,000	1,732 8	3,05,000	3,10,000	3,322 8
48,000	50,000	1,762 8	3,10,000	3,15,000	3,352 8
50,000	55,000	1,792 8	3,15,000	3,20,000	3,382 8
55,000	60,000	1,822 8	3,20,000	3,25,000	3,412 8
60,000	65,000	1,852 8	3,25,000	3,30,000	3,442 8
65,000	70,000	1,882 8	3,30,000	3,35,000	3,472 8
70,000	75,000	1,912 8	3,35,000	3,40,000	3,502 8
75,000	80,000	1,942 8	3,40,000	3,45,000	3,532 8
80,000	85,000	1,972 8	3,45,000	3,50,000	3,562 8
85,000	90,000	2,002 8	3,50,000	3,55,000	3,592 8
90,000	95,000	2,032 8	3,55,000	3,60.000	3,622 8
95,000	1 00,000	2,062 8	3,60.000	3,65,000	3,652 8
1,00.000	1,05,000	2.092 8	3,65,000	3.70,000	3,682 8
1,05,000	1,10.000	2,122 8	3,70,000	3,75,000	3,712 8
1,10,000	1,15,000	2,152 8	3,75,000	3,80,000	3,742 8
1,15.000	1,20,000	2,182 8	3,80,000	3,85.000	3,772 8
1,20,000	1,25,000	2,212 8	3,85,000	3,90,000	3,802 8
1,25,000	1,30,000	2,242 8	3,90,000	3,95,000	3,832 8
1,30,000	1.35,000	2,272 8	3,95,000	4,00,000	3,862 8
1,35,000	1,40.000	2,302 8			

And when the amount or value of the subject-matter exceeds Rs. 4,00,000 the proper fee leviable shall be Rs. 3,862 annas 8 *plus* Rs. 30 for each five thousand rupees or part thereof in excess of Rs. 4,00,000.

XIII.—UNITED PROVINCES ACT NO. III OF 1932.

THE UNITED PROVINCES COURT-FEES (AMENDMENT) ACT, 1932.

[Passed by the Local Legislature of the United Provinces of Agra and Oudh.]

(Received the assent of the Governor of the United Provinces of Agra and Oudh on April 14, 1932, *and of the Governor-General on April* 25, 1932, *and was published under S.* 81 *of the Government of India Act on May* 7, 1932.)

An Act further to amend the Court-Fees Act, 1870, *in its application to the United Provinces.*

WHEREAS it is expedient further to amend the Court-Fees Act, 1870, in its application to the United Provinces.

And whereas the previous sanction of the Governor-General has been obtained, under section 80-A, sub-section (3), of the Government of India Act, to the passing of this Act;

It is hereby enacted as follows:—

1. (1) This Act may be called THE UNITED PROVINCES COURT-FEES (AMENDMENT) ACT, 1932.

(2) It extends to the territories for the time being administered by the Local Government of the United Provinces.

(3) It shall come into force on the first day of May, 1932, and shall remain in force up till March 31, 1934.

2. To section 6 of the Court-Fees Act, 1870, hereinafter referred to as "the said Act", the following proviso shall be added, namely,—

Provided that where such document relates to any suit, appeal or other proceeding under the Oudh Rent Act, 1886, the Agra Tenancy Act, 1926, or the United Provinces Land Revenue Act, 1901, the proper fee shall be three-quarters of the fee indicated in either of the said schedules except where the document is of any of the kinds specified as chargeable in the first schedule and the amount or value of the subject-matter of the suit, appeal or proceeding to which it relates exceeds the value of Rs. 500:

Provided further that the fee payable in respect of any such document as is mentioned in the foregoing proviso shall not be less than that indicated by either of the said schedules before the commencement of this Act.

3. In paragraph (*v*) of section 7 of the said Act the word "ten" in clause (*a*) shall be read as "twenty" and the word "five" in clause (*b*) shall be read as "six".

4. For paragraph (*ix*) of section 7 of the said Act the following clause shall be substituted, namely,—

(*ix*) In suits against a mortgagee for the recovery of the property mortgaged according to the principal money expressed to be secured by the instrument of mortgage.

(*ix*) (*a*) In suits by a mortgagee to foreclose the mortgage, or where the mortgage is made by conditional sale, to have the sale declared absolute, according to the total amount claimed by way of principal and interest.

5. In section 18 of the said Act for the words "eight annas" the words "twelve annas" shall be substituted.

6. In Schedule I to the said Act the following amendments shall be made, namely,—

(*i*) In Article 1 for the entries in the second and third columns the entries shown in the first and second columns of Schedule A to this Act shall be substituted.

(*ii*) In Article 6 for the words "four", "eight" and "one rupee" in the third column the words "six", "twelve" and "one rupee eight annas", respectively, shall be substituted.

(*iii*) In Article 7 for the words "eight" and "one rupee" in the third column the words "twelve" and "one rupee eight annas", respectively, shall be substituted.

(*iv*) In Article 8 for the word "eight" in the third column the word "twelve" shall be substituted.

(*v*) In Article 11 for the entries above the proviso in the second and third columns the following shall be substituted:—

1. When the amount or value of the property in respect of which the grant of Probate or Letters is made exceeds one thousand rupees, but does not exceed ten thousand rupees;	Two per centum on such amount or value.
and	
2. When such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees;	Two and one-half per centum on such amount or value.
and	
3. When such amount or value exceeds fifty thousand rupees, but does not exceed one lakh of rupees, for the portion of such amount or value which is in excess of fifty thousand rupees;	Three per centum on such amount or value.
and	
4. When such amount or value exceeds a lakh of rupees, for the portion of such amount or value which is in excess of a lakh of rupees.	Four per centum on such amount or value.

(*vi*) In Article 12 for the entries in the first and second columns and for the first paragraph in the third column the following shall be substituted:—

12. Certificate under the Indian Succession Act, 1925.	1. When the amount or value of any debt or security specified in the certificate under section 374 of the Act does not exceed twenty thousand rupees;	Two per centum on such amount or value and three per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act.
	and	
	2. When such amount or value exceeds twenty thousand rupees, but does not exceed fifty thousand rupees, for the portion of such amount or value which is in excess of twenty thousand rupees;	Two and a half per centum on suce amount or value and three and a three-quarters per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act.
	and	
	3. When such amount or value exceeds fifty thousand rupees, but does not exceed a lakh of rupees, for the portion of such amount or	Three per centum on such amount or value and four and a half per centum on the amount or value of any debt or

	value which is in excess of fifty thousand rupees;	security to which the certificate is extended under section 376 of the Act.
	and	
4. When such amount or value exceeds a lakh of rupees, for the portion of such amount or value which is in excess of a lakh of rupees.		Four per centum on such amount or value and six per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act.

(*vii*) For the table of *ad valorem* fees leviable on the institution of suits the Table shown in Schedule B to this Act shall be substituted.

7. In Schedule II to the said Act the following amendments shall be made, namely:—

(*i*) In Article 1 for the words "one anna", "eight annas" and "one rupee" in the third column the words "two annas", "twelve annas" and "one rupee and eight annas", respectively, shall be substituted: and the following clause shall be substituted for clause (*d*):—

(*d*) I.	When presented to the Board of Revenue for revision of a judgment or order.	Three rupees.
II.	When presented to a High Court—	
	(1) Under the Indian Companies Act, 1913 (Act VII of 1913), for winding up a company.	Fifty rupees.
	(2) Under section 115 of the Code of Civil Procedure, 1908 (Act V of 1908), for revision of an order.	Four rupees.
	(3) In any other case	.. Three rupees.

(*ii*) In Article 1-A for the words "twelve annas", in the third column the words "one rupee two annas" shall be substituted.

(*iii*) In Articles 5, 6, and 7 for the word "eight", in the third column the word "twelve" shall be substituted.

(*iv*) In Article 10 for the words "eight annas" "one rupee" and "two rupees" in the third column, the words "twelve annas", "one rupee eight annas" and "three rupees", respectively, shall be substituted.

(*v*) For Article 11, the following shall be substituted:—

11. Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree, and is presented	(*a*) to any Civil Court other than a High Court, or to any Revenue Court or Executive Officer other than a Commissioner of the division or Chief Controlling Revenue or Executive Authority.	Twelve annas.
	(*b*) to a Commissioner of the division.	Two rupees.
	(*c*) to a High Court or to a Chief Controlling Executive or Revenue Authority.	Three rupees.

(*vi*) The bracket opposite Articles 12, 13 and 14 in the second column shall be omitted and for Article 12 the following shall be substituted:—

12. Caveat.	When the amount or value of the property in respect of which the caveat is lodged—	
	(*a*) does not exceed five thousand rupees.	Five rupees.
	(*b*) exceeds five thousand rupees.	Ten rupees.

(*vii*) For Article 14 the following shall be substituted:—

14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866.	..	Seven rupees eight annas.

(*viii*) In Article 17 for the words "ten rupees" in the third column, the words "fifteen rupees" shall be substituted, and the following proviso shall be added:—

Provided that in a suit filed before a High Court under its original jurisdiction the fee chargeable under this article shall be one hundred rupees.

(*ix*) In Articles 18 and 19 for the word "ten" in the third column the word "fifteen" shall be substituted.

(*x*) In Articles 20 and 22 for the word "twenty" in the third column the word "thirty" shall be substituted.

SCHEDULE A.

When the amount or value of the subject-matter in dispute does not exceed five rupees.	Six annas.
When such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees.	Six annas.
When such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees up to two hundred rupees.	Twelve annas.
When such amount or value exceeds two hundred rupees, for every ten rupees, or part thereof, in excess of two hundred rupees up to five hundred rupees.	One rupee.
When such amount or value exceeds five hundred rupees, for every ten rupees, or part thereof, in excess of five hundred rupees, up to one thousand rupees.	One rupee four annas.
When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees up to five thousand rupees.	Six rupees four annas.
When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees.	Twelve rupees eight annas.

When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees. — Eighteen rupees twelve annas.

When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees. — Twenty-five rupees.

When such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees. — Twenty-five rupees.

When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees: — Thirty-one rupees four annas.

Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be four thousand five hundred rupees.

SCHEDULE B.

Table of rates of ad valorem *fees leviable on the institution of suits.*

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.	When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
..	5	0 6	170	180	13 8
5	10	0 12	180	190	14 4
10	15	1 2	190	200	15 0
15	20	1 8	200	210	16 0
20	25	1 14	210	220	17 0
25	30	2 4	220	230	18 0
30	35	2 10	230	240	19 0
35	40	3 0	240	250	20 0
40	45	3 6	250	260	21 0
45	50	3 12	260	270	22 0
50	55	4 2	270	280	23 0
55	60	4 8	280	290	24 0
60	65	4 14	290	300	25 0
65	70	5 4	300	310	26 0
70	75	5 10	310	320	27 0
75	80	6 0	320	330	28 0
80	85	6 6	330	340	29 0
85	90	6 12	340	350	30 0
90	95	7 2	350	360	31 0
95	100	7 8	360	370	32 0
100	110	8 4	370	380	33 0
110	120	9 0	380	390	34 0
120	130	9 12	390	400	35 0
130	140	10 8	400	410	36 0
140	150	11 4	410	420	37 0
150	160	12 0	420	430	38 0
160	170	12 12	430	440	39 0

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.	When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
440	450	40 0	970	980	105 0
450	460	41 0	980	990	106 4
460	470	42 0	990	1,000	107 8
470	480	43 0	1,000	1,100	113 12
480	490	44 0	1,100	1,200	120 0
490	500	45 0	1,200	1,300	126 4
500	510	46 4	1,300	1,400	132 8
510	520	47 8	1,400	1,500	138 12
520	530	48 12	1,500	1,600	145 0
530	540	50 0	1,600	1,700	151 4
540	550	51 4	1,700	1,800	157 8
550	560	52 8	1,800	1,900	163 12
560	570	53 12	1,900	2,000	170 0
570	580	55 0	2,000	2,100	176 4
580	590	56 4	2,100	2,200	182 8
590	600	57 8	2,200	2,300	188 12
600	610	58 12	2,300	2,400	195 0
610	620	60 0	2,400	2,500	201 4
620	630	61 4	2,500	2,600	207 8
630	640	62 8	2,600	2,700	213 12
640	650	63 12	2,700	2,800	220 0
650	660	65 0	2,800	2,900	226 4
660	670	66 4	2,900	3,000	232 8
670	680	67 8	3,000	3,100	238 12
680	690	68 12	3,100	3,200	245 0
690	700	70 0	3,200	3,300	251 4
700	710	71 4	3,300	3,400	257 8
710	720	72 8	3,400	3,500	263 12
720	730	73 12	3,500	3,600	270 0
730	740	75 0	3,600	3,700	276 4
740	750	76 4	3,700	3,800	282 8
750	760	77 8	3,800	3,900	288 12
760	770	78 12	3,900	4,000	295 0
770	780	80 0	4,000	4,100	301 4
780	790	81 4	4,100	4,200	307 8
790	800	82 8	4,200	4,300	313 12
800	810	83 12	4,300	4,400	320 0
810	820	85 0	4,400	4,500	326 4
820	830	86 4	4,500	4,600	332 8
830	840	87 8	4,600	4,700	338 12
840	850	88 12	4,700	4,800	345 0
850	860	90 0	4,800	4,900	351 4
860	870	91 4	4,900	5,000	357 8
870	880	92 8	5,000	5,250	370 0
880	890	93 12	5,250	5,500	382 8
890	900	95 0	5,500	5,750	395 0
900	910	96 4	5,750	6,000	407 8
910	920	97 8	6,000	6,250	420 0
920	930	98 12	6,250	6,500	432 8
930	940	100 0	6,500	6,750	445 0
940	950	101 4	6,750	7,000	457 8
950	960	102 8	7,000	7,250	470 0
960	970	103 12	7,250	7,500	482 8

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.	When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
7,500	7,750	495 0	20,000	21,000	1,007 8
7,750	8,000	507 8	21,000	22,000	1,032 8
8,000	8,250	520 0	22,000	23,000	1,057 8
8,250	8,500	532 8	23,000	24,000	1,082 8
8,500	8,750	545 0	24,000	25,000	1,107 8
8,750	9,000	557 8	25,000	26,000	1,132 8
9,000	9,250	570 0	26,000	27,000	1,157 8
9,250	9,500	582 8	27,000	28,000	1,182 8
9,500	9,750	595 0	28,000	29,000	1,207 8
9,750	10,000	607 8	29,000	30,000	1,232 8
10,000	10,500	626 4	30,000	32,000	1,257 8
10,500	11,000	645 0	32,000	34,000	1,282 8
11,000	11,500	663 12	34,000	36,000	1,307 8
11,500	12,000	682 8	36,000	38,000	1,332 8
12,000	12,500	701 4	38,000	40,000	1,357 8
12,500	13,000	720 0	40,000	42,000	1,382 8
13,000	13,500	738 12	42,000	44,000	1,407 8
13,500	14,000	757 8	44,000	46,000	1,432 8
14,000	14,500	776 4	46,000	48,000	1,457 8
14,500	15,000	795 0	48,000	50,000	1,482 8
15,000	15,500	813 12	50,000	55,000	1,513 12
15,500	16,000	832 8	55,000	60,000	1,545 0
16,000	16,500	851 4	60,000	65,000	1,576 4
16,500	17,000	870 0	65,000	70,000	1,607 8
17,000	17,500	888 12	70,000	75,000	1,638 12
17,500	18,000	907 8	75,000	80,000	1,670 0
18,000	18,500	926 4	80,000	85,000	1,701 4
18,500	19,000	945 0	85,000	90,000	1,732 8
19,000	19,500	963 12	90,000	95,000	1,763 12
19,500	20,000	982 8	95,000	1,00,000	1,795 0

And the fee increases at the rate of thirty-one rupees four annas for every five thousand rupees or part thereof, for example—

Rs.	Rs. A.
2,00,000	2,420 0
3,00,000	3,045 0
4,00,000	3,670 0
5,00,000	4,295 0
5,35,000	4,500 0

APPENDIX III.

REDUCTIONS AND REMISSIONS OF COURT-FEES.

NOTIFICATION REDUCING AND REMITTING COURT-FEES.

A.—RULES BY THE GOVERNOR-GENERAL IN COUNCIL.

No. 4650, dated the 10th September, 1889.

[*Gazette of India*, 1889, *Part I, p.* 506.]

Under section 35 of the Court-Fees Act (VII of 1870), and in supersession of all previous notifications under that section, it is hereby notified that, in exercise of the power to reduce or limit, in the whole or in any part of British India, all or any of the fees mentioned in the First and Second Schedules to the said Act, the Governor-General in Council has been pleased to make the reductions and remissions hereinafter set forth, namely:—

A.—General for the whole of British India.

(1) to remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use, and on applications for renewal of stamped paper which has become spoiled or unfit for use;

(2) to remit the fees chargeable on applications in writing, relating exclusively to the purchase of salt which is the property of the Government;

(3) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or Officer, without summoning the defendant, rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated, together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should, in his opinion, be refunded;

(4) to remit the fees chargeable on—

(*a*) copies of village settlement-records furnished to land-holders and cultivators during the currency or at the termination of settlement operations;

(*b*) lists of fields extracted from village settlement-records for the purpose of being filed with petitions of plaint in settlement Courts:

Provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement-records (other than lists of fields) extracted as aforesaid, which may be filed in any Court or office;

[1] (5) to declare that the fee chargeable on a plaint filed in a suit for possession of immoveable property under section 9 of the [2]Specific Relief Act (I of 1877), shall be one-half of the amount prescribed in the scale of fees for plaints mentioned in Article 1 of the First Schedule;

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[1] Clause (5) is superseded by the amendment made in Article 2 of Schedule I of the Court-Fees Act, 1870, by the Repealing and Amending Act, 1891 (XII of 1891), Sch. II.

[2] Genl. Acts, Vol. II.

[1][(6) to direct that the fee chargeable on appeals from orders under clause (c) of section 244 of the [2]Code of Civil Procedure (Act XIV of 1882) shall be limited to the amounts chargeable under Article 11 of the Second Schedule;

(7) to remit the fees chargeable on security-bonds for the keeping of the peace by, or good behaviour of, persons other than the executants;

(8) to remit the fee payable under Article 1, clause (*c*), of the Second Schedule on an application or petition presented to a Chief Commissioner, when the application or petition is accompanied by a petition to the Government of India and contains merely a request that that petition may be forwarded to the Government of India;

(9) to remit the fees chargeable under Articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts or Revenue Courts or Offices for the private use of persons applying for them:

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of justice or received by any public officer;

(10) to remit the fees chargeable, under paragraph 4 of clause (*a*) and paragraph 2 of clause (*b*) of Article 1 of the Second Schedule, on applications for orders for the payment of deposits in cases in which the deposits does not exceed Rs. 25 in amount:

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application;

(11) to remit, with reference to clause (*xi*) of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently, when made by persons who do not at the time of application hold the land;

(12) to remit the fees chargeable on applications for loans under the [3]Land Improvements Loans Act, XIX of 1883, or [3]the Agriculturists' Loans Act, XII of 1884;

(13) to remit the fee chargeable on an application made by a person to the Collector under the second paragraph of section 39 of the [4]Indian Stamp Act, I of 1879, for the return to that person, or to the Registration-officer who impounded it, of a document impounded and sent to the Collector by a Registration-officer;

(14) to remit the fee chargeable on an application made for transfer of a stock-note from one circle to another under paragraph 6 of Resolution No. 2566, dated the 20th August, 1885;

(15) to remit the fees chargeable on the following documents, namely,

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[1] Clause (6), as it now stands, forms the subject of a separate notification, and is inserted here in this form for convenience of reference. *See* Notification No. 4344 S.R., dated 6th October, 1893, *Gazette of India*, 1893, Pt. I, p. 575.

[2] *See* now Act V of 1908, Genl. Acts, Vol. VI.

[3] Genl. Acts, Vol. II

[4] *See* now the Indian Stamp Act, 1899 (II of 1899), S. 42, Genl. Acts, Vol. V.

(*a*) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1882,[1] or of a translation thereof, when the copy is given to an accused person;

(*b*) copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person;

(*c*) copy or translation of a judgment in a case other than a summons-case, and copy of the heads of Judge's charge to the jury, when the copy or translation is given under section 371 of the said Code to an accused person;

(*d*) copy or translation of the judgment in a summons-case, when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail;

(*e*) copy of an order of maintenance, when the copy is given under section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid;

(*f*) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which, on its being applied for under section 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment;

(*g*) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other persons specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court;

(*h*) copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings;

(*i*) copies of judgments or depositions required by officers of the Police Department in the course of their duties;

(15) to direct that the fee chargeable—

(*a*) on an application to a Collector, or to any officer or person discharging all or any of the functions of a Collector, with respect either to liability to assessment or to the amount of an assessment under Act II of 1886 (*an Act for imposing a tax on income derived from sources other than agriculture*), and

(*b*) on a copy of an order passed under section 26 of the same Act, shall be limited to one anna;

(17) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office;

(18) to direct that, when a part of an estate paying annual revenue to the Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value

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[1] *See* now the Code of Criminal Procedure, 1898 (Act V of 1898), Genl. Acts, Vol. V.

of the subject-matter of a suit for the possession of, or to enforce a right of pre-emption in respect of, a fractional share of that part shall, for the purposes of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed five times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share;

(19) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by this notification;

[1] (19-*a*) to remit the fee chargeable on an application for the grant of a licence for the vend of stamps;

[2] (19-*b*) to direct that no Court-fee shall be charged on an application for the repayment of a fine or of any portion of a fine the refund of which has been ordered by competent authority.

[3] (19-*c*) to remit the fees chargeable on applications for copies of documents detailed in clauses (4) and (15), *supra;*

[3] (19-*d*) to remit the duty chargeable in respect of Indian Probates, Letters of Administration of Succession Certificates on the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1882 (VI of 1882), provided that the said share or interest was registered in a branch register in the United Kingdom under the Indian Companies (Branch Registers) Act, 1900 (IV of 1900), and that such member was at the date of his decease domiciled elsewhere than in India;

[3] (19-*e*) to remit the fees chargeable on applications presented to officers of land revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed;

[3] (19-*f*) to remit the fee chargeable on applications and petitions presented to a Collector or any Revenue Officer having jurisdiction equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the Province;

(19-*g*) (*a*) to remit all fees payable under Schedule II upon applications relating to licences or duplicates granted or renewed under the Indian Arms Rules, 1909, other than licences or duplicates of the nature hereinafter referred to in sub-head (*b*), and

(*b*) to reduce to one anna all fees exceeding one anna payable under the Schedule upon applications relating to licences or duplicates granted or renewed under the said rules in respect of which

(*i*) no fee is payable under the said rules, or

(*ii*) the fee is payable under the said rules has been collected in full;

(19-*h*) to remit the fees chargeable on applications for the grant of licences of the nature mentioned in items 8 and 9 of the Schedule II

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[1] Clause (19-*a*) was inserted by Notification No. 4276-S.R., dated 23rd September, 1897. See *Gazette of India,* 1897, Pt. I, p. 864.

[2] Clause (19-*b*) forms the subject of a separate Notification (No. 3389-S.R., dated 6th August, 1896, see *Gazette of India,* 1896, Pt. I, p. 604), and is inserted here in this form for convenience of reference.

[3] Clause (19-*c*) forms the subject of a separate Notification (No. 1180-Exc., dated 24th February, 1905, see *Gazette of India,* 1905, Pt. I, p. 117).

Clauses (19-*d to* 19-*f*) also form the subject of separate Notifications, *see* Notifications Nos. 881-S.R., dated the 17th February, 1900, 4385-S.R., dated the 19th August, 1901, 6069-Exc., dated the 26th October, 1906, *Gazette of India,* 1900, 1901, 1906, Pt. I, and pp. 100, 608 and 760, respectively.

appended to the Indian Explosives Rules, 1914, to possess gun-powder, other explosive or detonators required *bona fide* for blasting purpose. No. 1938-F., dated 17th December, 1914, *Gazette of India,* 19th December, 1914, Pt. I.

(19-*i*) to make in the whole of British India the remissions hereinafter set forth in the fees leviable under Articles 11, 12, 12-A of the First Schedule of the said Act, on the property of any person subject to Military law either under the Army Act 44 and 45 Vict., c. 58) or under the Indian Army Act, VIII of 1911, who is killed or dies of wounds inflicted, accident occurring or disease contracted within twelve months before the death while on active service in the present war, namely:—

(*a*) where the amount or the value of the property in respect of which the grant of probate or letters of administration is made or which is specified in the certificate under the Succession Certificate Act, 1899, or in the certificate under Bombay Regulation No. 8 of 1827, does not exceed Rs. 5,000, to remit the whole of the fees leviable in respect of the property;

(*b*) where the said amount or value exceeds Rs. 5,000 to remit the whole of the said fees in respect of the first Rs. 5,000; and

(*c*) where any property passes more than once in consequence of such deaths, to remit in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property. No. 120-F., dated 14th January, 1915, *Gazette of India,* dated 6th January, 1915, Pt. I, pp. 160, 161.

(19-*j*) to remit in the whole of British India the fees chargeable under Article 1 (*a*) and (*b*) of Schedule II of the Act on applications for mutations of names in respect of the property of any person subject to military law either under the Army Act (44 and 45 Vict., c. 58) or under the Indian Army Act, 1911 (VIII of 1911) who is killed or dies of wounds inflicted, accident occurring or disease contracted within 12 months, before death, while on active service in the present war. No. 371-F., dated 25th February, 1915, *Gazette of India,* dated 27th September, 1915, Pt. I, p. 350.

(19-*k*) to remit the fees chargeable on application for the grant of licences issued in accordance with the provisions of any rule made under section 9 of the Petroleum Act, 1899 (VIII of 1899) for the possession of dangerous petroleum for use on motor vehicles and for its transport thereon for the purpose of use therein. No. 134-F., dated 27th September, 1916, *Gazette of India,* dated 30th September, 1926, Pt. I, p. 1461.

B.—Special for the Presidency of Fort St. George only.

[1] (20) to direct that the fees chargeable on the following documents filed in claims preferred under the Madras Hereditary Village Offices Act, 1895 (Madras Act III of 1895), shall be limited to the sum specified below against each, namely:—

plaint, petition for execution or memorandum of appeal to a Collector—eight annas;

memorandum of appeal to the Board of Revenue—two rupees;

[1] (21) to remit the fees chargeable (*a*) on copies of judgments, decrees, or orders passed on claims preferred under the Madras Hereditary Village Offices Act, 1895 (Madras Act III of 1895), and (*b*) on applications filed by either party in the course of the trial of suits or appeals or in the course of execution of decrees under the said Act;

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[1] Clauses (20) and (21) were substituted for the original clause by Notification No. 3449-S.R., dated the 6th August, 1897, *Gazette of India,* 1897, Pt. I, p. 696.

(22) to remit the fees chargeable under the First Schedule on plaints in summary suits brought before Collectors under [1]Madras Act VIII of 1865 (*An Act to consolidate and improve the laws which define the process to be taken for the recovery of rent*);

(23) to reduce the fees chargeable in suits by Government raiyats, for the recovery of land sold for arrears of revenue, to the amount which would be chargeable if the value of the subject-matter were only the rent of the land payable for the year next before the date of presentation of the plaint;

[2] (23*a*) to remit the fees chargeable under the said Act on applications made by toddy-drawers and shop-keepers for the grant of licences permitting them or their servants to draw toddy from cocoanut and other palms;

[3] (23*b*) to remit the fees chargeable on all communications made under Chapter II of the Madras Proprietary Estates Village Service Act, 1894 (Madras Act II of 1894) by a proprietor to any Revenue Officer relating to the appointment and control of village officers;

[4] (23*c*) to remit the fees chargeable on certain applications made by cultivators of the hemp plant (*Cannabis Sativa* or *Indica*) in the Madras Presidency;

[4] (23*d*) to remit the fees chargeable on applications made by distillers and warehouse-keepers in the Madras Presidency to the Excise officer in charge of the distillery or warehouse for the issue of a permit for the transport of country spirit;

(23*e*) to remit the fees chargeable under item 1 (*a*) of Schedule II of the Act on applications for transfer of registry in the revenue accounts in respect of ryotwari holdings in the Madras Presidency. No. 874-F., dated 29th August, 1913, *Gazette of India*, dated 29th August, 1913, Pt. I, p. 826.

C.—Special for the Bombay Presidency.

D.—Special for Bengal.

E.—Special for Agra.

F.—Special for United Provinces.

[5] *F.—Special for N. W. F. Provinces.*

See APPENDICES *infra.*

G.—Special for the Punjab only.

(42) to remit the fees chargeable on copies of orders or proceedings under section 47 of the [6]Punjab Land Revenue Act, XVII of 1887 made or recorded by Collectors or other Revenue Officers engaged in revising a

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[1] *See* now Madras Estates Land Act, 1908 (Madras Act I of 1908).

[2] Clause (23-*a*) was inserted by notification No. 2661-S.R., dated the 15th June, 1897, see *Gazette of India*, 1897, Pt. I, p. 525.

[3] *See* Notification No. 3310-S.R., dated the 4th June, 1903, *Gazette of India*, 1903, Pt. I, p. 399.

[4] *See* Notification No. 225-S.R., dated the 11th January, 1901, *Gazette of India*, 1901, Pt. I, p. 32. And No. 6260-S.R., dated the 12th December, 1901, *Gazette of India*, 1901, Pt. I, p. 1030.

[5] *See* Notification No. 3844-S.R., dated the 26th June, 1903, *Gazette of India*, 1903, Pt. I, p. 538.

[6] Punjab and N. W. Code.

record-of-rights under a notification[1], published in accordance with section 32 of the said Act:

Provided that the copy if furnished for the purpose of being filed with application or petition to a Collector or other Revenue Officer engaged as aforesaid in revising a record-of-rights, or to the Commissioner of the Division, or to the Financial Commissioner, Punjab, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interests therein, if presented previous to the final confirmation of such revision;

(43) to remit the fees chargeable on applications under section 97 of the [2]Punjab Land Revenue Act, XVII of 1887, made by village-officers in accordance with the provisions of rule 83 of the rules under that Act published with the [3]Notification of the Punjab Government, No. 76, dated the 1st March, 1888;

[4] (43*a*) to remit in the territories administered by the Lieutenant-Governor of the Punjab the fees chargeable on plaints and suits brought against British subjects by Bhittanis ordinarily residing outside British India:—

(*i*) for the recovery of debts;

(*ii*) appertaining to the custody of a woman; or

(*iii*) appertaining to inheritance;

[5] (43*b*) to remit in the territories administered by the Lieutenant-Governor of the Punjab, the fees chargeable on copies of all records maintained under the provisions of Chapter VI of the Punjab Land Revenue Act, 1887 (XVII of 1887), when such copies are exhibited or recorded in any Court of Justice or are received or furnished by any public officer;

(43*c*) to remit the fees chargeable under the Act on application for the grant of fishing licences prescribed by the rules made by the Government of the Punjab under section 3 of the Punjab Fisheries Act, 1914 (II of 1914).

H.—Special for Burma only.

[6] (44) to remit the fees chargeable on the following documents furnished to cultivators, namely:

certified copies of extracts from settlement or supplementary survey registers containing particulars of the holdings of cultivators;

[6] (45) to remit the fees chargeable in Upper Burma on plaints, applications, petitions and copies which are filed, exhibited or recorded in the Court of a Circle Officer, or in any Court presided over by a Thugyi or Myothugyi, or which are received or furnished by a Thugyi or Myothugyi;

Explanation.—For the purposes of this clause the expression "Thugyi or Myothugyi" includes any person, however designated, who in any part of Upper Burma occupies a position similar to that which is held in other parts by a Thugyi or Myothugyi;

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[1] Punjab and N. W. Code.

[2] *See* Notification No. 5481-S.R., dated the 15th October, 1902, *Gazette of India*, 1902, Pt. I, p. 753.

[3] See *Punjab Gazette*, 1888, Pt. I, pp. 279 and 301.

[4] *See* Notification No. 2807-S.R., dated 26th June, 1896, *Gazette of India*, 1896, Pt. I, p. 604.

[5] *See* Notification No. 4283-S.R., dated the 6th August, 1902, *Gazette of India*, 1902, Pt. I, p. 577.

[6] Clauses (44) and (45) were substituted for clauses (44) to (46) by Notification No. 4724-S.R., dated the 22nd October, 1897, see *Gazette of India*, 1897, Pt. I, p. 956.

[1] (46) to remit in Lower Burma the fees chargeable on applications presented under section 45 of the [2]Burma Land and Revenue Act (II of 1876), by Revenue Officers with a view to the realization of arrears of revenue;

[3] (46-*a*) to remit in all parts of Burma except the Shan States, the fees chargeable under section 35 of the Act on applications presented to officers of land-revenue for the notification of errors in the assessment of land-revenue;

I.—Special for the Central Provinces only.

(47) to direct that the fee chargeable on a petition of objection to assessment under [4]Act XIV of 1867 (*An Act to provide for the Assessment of the Pandhari-tax in certain parts of the Central Provinces*) shall, whatever may be the amount of the assessment to which the petition relates, be limited to one anna;

[5] (47*a*) to remit the fees chargeable on applications presented to Courts in the Central Provinces with reference to sections 257-A and 258 of the Code of Civil Procedure (Act XIV of 1882) in relation to awards made in the course of conciliation proceedings held with the sanction of the Local Government;

K.—Special for the Bombay Presidency, Bengal, the North-Western Provinces and Oudh, the Punjab, Lower Burma, the Central Provinces, Ajmer and Coorg.

[6] (48) to direct that whenever, upon payment of the full fee a certificate of administration has been granted under [7]Act XL of 1858 (*An Act for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal* or [7]Act XX of 1864 (*An Act for making better provision for the care of the persons and property of Minors in the Presidency of Bombay*), and a fresh certificate is for any reasons subsequently granted in respect of the same estate, no fee shall be chargeable upon the fresh certificate so granted.

BRITISH BALUCHISTAN.

The Governor-General of India in Council has been pleased to extend the remissions and reductions specified in rules 1 to 19 (*b*) set out above to British Baluchistan by Notification No. 3633-I-B. of the Government of India, dated 18th November, 1913, and published in the *Gazette of India*, dated 22nd November, 1913, Pt. I, pp. 1109 to 1112.

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[1] Notification No. 2243-S.R., dated 22nd May, 1896, *Gazette of India*, 1896, Pt. I, p. 379.

[2] Bur. Code.

[3] *See* Notification No. 4572-S.R., dated the 2nd August, 1902, *Gazette of India*, 1902, Pt. I, p. 613.

[4] Rep. Act VI of 1902. The tax so called was abolished by the same Act. This clause is therefore obsolete.

[5] *See* Notification No. 4064-S.R., dated the 25th July, 1902, *Gazette of India*, Pt. I, p. 550.

[6] Clause K (48) is obsolete.

[7] The Minors Act (XL of 1858) and the Minors (Bombay) Act (XX of 1864) were repealed by the Guardians and Wards Act, 1890 (VIII of 1890), Genl. Acts, Vol. IV.

B.—BENGAL.

Under section 35 of the Court-Fees Act, by the Government of BENGAL.

No. 1872-J.—The 23rd May, 1921.—Under section 35 of the Court-Fees Act, 1870 (VII of 1870), as amended by the Devolution Act, 1920 (XXXVIII of 1920), and in supersession of all previous notifications under that section, it is hereby notified that in exercise of the power to reduce or remit in the whole or in any part of the territories under his administration, all or any of the fees mentioned in the First and Second Schedules of the Court-Fees Act, 1870 (VII of 1870), the Governor in Council is pleased to make the reductions and remissions hereinafter set forth, namely:—

(1) to remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use and on applications for renewal of stamped paper which has become spoiled or unfit for use;

(2) to remit the fees chargeable on applications in writing, relating exclusivey to the purchase of salt which is the property of the Government;

(3) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or officer, without summoning the defendant, rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defandants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated, together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that value of the stamp should, in his opinion, be refunded;

(4) to remit the fees chargeable on—

(*a*) copies of village settlement-records furnished to landholders and cultivators during the currency or at the termination of settlement operations,

(*b*) lists of fields extracted from village settlement-records for the purpose of being filed with petitions of plaint in Settlement Courts:

Provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement-records (other than lists of fields) extracted as aforesaid, which may be filed in any Court or office;

(5) to direct that the fee chargeable on appeals from orders under section 47 of the Code of Civil Procedure, 1908 (Act V of 1908) shall be limited to the amounts chargeable under Article 11 of the Second Schedule;

(6) to remit the fees chargeable on security-bonds for the keeping of the peace by, or good behaviour of, persons other than the executants;

(7) to remit the fee payable under Article 1, clause (*e*) of the Second Schedule on an application or petition presented to a Chief Commissioner, when the application or petition is accompanied by a petition to the Government of India and contains merely a request that that petition may be forwarded to the Government of India;

(8) to remit the fees chargeable under Articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts or Revenue Courts or offices for the private use of persons applying for them:

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer;

(9) to remit the fees chargeable, under paragraph 5 of clause (*a*) and paragraph 2 of clause (*b*) of Article 1 of the Second Schedule, on applications for orders for the payment of deposits in cases in which the deposit does not exceed Rs. 25 in amount:

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the applications;

(10) to remit, with reference to clause (*xi*) of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently, when made by persons who do not at the time of application hold the land;

(11) to remit the fee chargeable on applications for loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884);

(12) to remit the fees chargeable on an application made by a person to the Collector under sub-section (2) of section 42 of the Indian Stamp Act, 1899 (II of 1899), for the return to that person, or to the Registration Officer who impounded it, of a document impounded and sent to the Collector by a Registration Officer;

(13) to remit the fees chargeable on the following documents, namely:—

(*a*) a copy of a charge framed under section 210 of the Code of Criminal Procedure, 1898 (Act V of 1898), or of a translation thereof when the copy is given to an accused person,

(*b*) copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person,

(*c*) copy or translation of a judgment in a case other than a summons case, a copy of the heads of the Judge's charge to jury, when the copy or translation is given under section 371 of the said Code to an accused person,

(*d*) copy or translation of the judgment in a summons case, when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail,

(*e*) copy of an order of maintenance, when the copy is given under section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid,

(*f*) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record, when the copy is not a copy which may be graned under any of the preceding sub-clauses without the payment of a fee, but is a copy which, on its being applied for under section 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment,

(*g*) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court,

(*h*) copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation for the use of any Court or Magistrate, or may consider necessary

for the purpose of advising the Government in connection with any criminal proceedings,

(*i*) copies of judgments or depositions required by officers of the Police Department in the course of their duties;

(14) to remit in the Presidency of Bengal the fee chargeable on an application to a Collector as defined in the Indian Incometax Act, 1918 (VII of 1918) with respect either to liability to assessment or to the amount or rate of an assessment or for a refund of income-tax under the Indian Income-tax Act, 1918 (VII of 1918). *Vide* S.R. No. 1498, 30th May, 1921, *Calcutta Gazette,* Pt. I, p. 953;

(15) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office;

(16) to direct that when a part of an estate paying annual revenue to the Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession of, or to enforce a right of pre-emption in respect of, a fractional share of that part shall for the purposes of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed five times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share;

(17) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by this notification;

(18) to remit the fee chargeable on an application for the grant of a licence for the vend of stamp;

(19) to direct that no Court-fee shall be charged on an application for the repayment of a fine or of any portion of a fine the refund of which has been ordered by competent authority;

(20) to remit the fees chargeable on applications for copies of documents detailed in clauses (4) and (13), *supra;*

(21) to remit the duty chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates on the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1913 (VII of 1913), provided that the said share or interest was registered in a branch register kept in the United Kingdom in accordance with the provisions of sections 41 and 42 of the said Act, VII of 1913, and that such member was at the date of his decease domiciled elsewhere than in India;

(22) to remit the fees chargeable on applications presented to officers of land-revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed;

(23) to remit the fee chargeable on applications and petitions presented to a Collector or any Revenue officer having jurisdiction equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the Province;

(24) (*a*) to remit the fees payable under Schedule II upon applications for the grant or renewal of licences or duplicates under the Indian Arms Rules, 1920, in respect of which a fee is payable under those Rules, and

(*b*) to reduce to one anna all fees exceeding one anna payable under Schedule II upon other applications relating to licences or duplicates granted or renewed under the said rules;

(25) to remit the fees chargeable on applications for the grant of licences of the nature mentioned in items 8 and 9 of Schedule II appended to the Indian Explosives Rules, 1914, to possess gun-powder, other explosives or detonators required *bona fide* for blasting purposes;

(26) to remit as follows the fees on the property of any person subject to military law either under the Army Act (44 and 45 Vict., c. 58), or under the Indian Army Act, 1911 (VIII of 1911) who is killed or dies of wounds inflicted, accident occurring or diseases contracted within three years before death while on active service in the present war:—

(*a*) where the amount of or value of property in respect of which the grant of probate or letters of administration is made or which is specified in the certificate under the Succession Certificate Act, 1889, does not exceed Rs. 50,000 to remit the whole of the fees leviable in respect of that property;

(*b*) where the said amount or value exceeds Rs. 50,000 to remit the whole of the said fees in respect of the first Rs. 50,000; and

(*c*) where any property passes more than once in consequence of such deaths to remit in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property;

(27) to remit the fees chargeable on application for mutations of names in respect of the property of any person subject to military law either under the Army Act (44 and 45 Vict., c. 58) or under the Indian Army Act, 1911 (VIII of 1911), who is killed, or dies of wounds inflicted, accident occurring or disease contracted within twelve months before death while on active service in the present war;

(28) to remit the fees chargeable on applications presented to officers of Land Revenue for the suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884);

(29) to remit the fees chargeable on applications for the grant of licences issued in accordance with the provisions of any rule made under section 9 of the Indian Petroleum Act, 1899 (VIII of 1899), for the possession of dangerous petroleum for the use of motor vehicles and for its transport thereon for the purpose of use therein;

(30) to remit the fees chargeable on copies of decrees of Civil or Revenue Courts situate in the territories of His Highness the Gaekwar of Baroda forwarded to any Court in British India for execution in pursuance of the provisions of section 44 of the Code of Civil Procedure, 1908 (Act V of 1908);

(31) to remit in the Hill Tracts of Chittagong all the fees mentioned in the First and Second Schedules;

(32) to declare that the proper fee to be charged upon an application to deposit in any Court, rent not exceeding the sum of fifteen rupees, shall be as follows:—

	Proper Fee.
If the amount deposited does not exceed Rs. 2-8 ..	One anna.
If the amount deposited exceeds Rs. 2-8, but does not exceed Rs. 5 ..	Two annas.
If the amount deposited exceeds Rs. 5, but does not exceed Rs. 10 ..	Four annas.
If the amount deposited exceeds Rs. 10, but does not exceed Rs. 15 ..	Six annas.

Provided that no fee shall be chargeable on an application to deposit rent in respect of which a fee is chargeable under any rule framed under

sub-section (2) of section 61 of the Bengal Tenancy Act, 1885 (VIII of 1885);

(33) to remit the fees chargeable on applications by ryots in the Rajshahi district for licences to cultivate the hemp plant;

(34) to remit the fees chargeable on applications or petitions of objection referring to any entry made or proposed to be made in a draft record-of-rights prepared under Chapter X of the Bengal Tenancy Act, 1885 (VIII of 1885), provided that such applications or petitions are presented before the publication of such draft record under section 103-A, sub-section (1), of the said Act;

(35) to remit the fees chargeable on certified copies of entries in record-of-rights furnished in accordance with any rules for the time being in force under the Bengal Tenancy Act, 1885 (VIII of 1885), after the final publication of such records-of-rights under section 103-A (2) of the Act;

(36) to remit the fees chargeable on applications for mutation of names in all Government estates;

(37) to remit the fees chargeable on copies of documents furnished by a District Magistrate to a pleader appointed by the Court to defend a pauper accused of murder;

(38) to reduce the fees chargeable under clause (*iii*) of Article 17 of Schedule II of the Act as amended by the Bengal Court-Fees Amendment Act, 1922, on plaints relating to suits instituted under section 106 of the Bengal Tenancy Act, 1885 (VIII of 1885), to the amount of an *ad valorem* fee chargeable under Article 1 of Schedule I of the Act, in cases where the amount of such fee would be less than Rs. 20 (altered by No. 3789-L.R., dated 3rd April 1922, vide *Calcutta Gazette*, 5th April, 1922, Pt. I, p. 689);

(39) to reduce to the sum of eight annas the Court-fees in excess of eight annas chargeable on certified copies of entries in a record-of-rights of a village or a portion thereof maintained under the Bengal Tenancy Act, 1885 (VIII of 1885);

(40) to remit in the Presidency of Bengal the fee leviable under item 1 of the Second Schedule to the said Act in the matter of applications made to customs officers by all consular officers for the free entry of goods in pursuance of their official functions;

(41) to remit in the Presidency of Bengal the fees mentioned in the First Schedule to the said Act chargeable in respect of copies of documents required by public officers for filing before Civil Courts in suits in which the Government is a party.

C.—BIHAR AND ORISSA.

No. 2576|L.A.-25.—Under section 35 of the Court-Fees Act, 1870 (VII of 1870), as amended by Act XXXVIII of 1920 and in supersession of all previous notifications under that section, it is hereby notified that, in exercise of the power to reduce or remit in Bihar and Orissa, all or any of the fees mentioned in the First and Second Schedules to the said Act, the Government of Bihar and Orissa have been pleased to make the reductions and remissions hereinafter set forth, namely:—

(1) To remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use and on applications for renewal of stamped paper which has become spoiled or unfit for use;

(2) to remit the fees chargeable on applications in writing relating exclusively to the purchase of salt which is the property of the Government;

(3) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or officer, without summoning the defendant, reject it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated, together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described and that the value of the stamp should, in his opinion, be refunded;

(4) to remit the fees chargeable on—

(*a*) copies of village settlement-records furnished to landholders and cultivators during the currency or at the termination of settlement operations,

(*b*) list of fields extracted from village settlement-records for the purpose of being filed with petitions of plaint in Settlement Courts:

Provided that nothing in this clause shall apply to copies of village settlement-records (other than lists of fields) extracted as aforesaid which may be filed in any Court or office;

(5) to direct that the fee chargeable on appeals from orders under section 47 of the Code of Civil Procedure, 1908 (Act V of 1908), shall be limited to the amounts chargeable under Article 11 of the Second Schedule;

(6) to remit the fees chargeable on security-bonds for the keeping of the peace by, or good behaviour of, persons other than the executants;

(7) to remit the fees chargeable under Articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts or Revenue Courts or offices for the private use of persons applying for them:

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer;

(8) to remit the fees chargeable, under paragraph 4 of clause (*a*) and paragraph 2 of clause (*b*) of Article 1 of the Second Schedule, on applications for orders for the payment of deposits in case in which the deposit does not exceed Rs. 25 in amount:

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application;

(9) to remit, with reference to clause (*xi*) of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently when made by persons who do not at the time of application hold the land;

(10) to remit the fees chargeable on applications for loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884);

(11) to remit the fee chargeable on an application made by a person to the Collector under sub-section (2) of section 42 of the Indian Stamp Act, 1899 (II of 1899) for the return to that person, or to the Registration Officer who impounded it, of a document impounded and sent to the Collector by the Registration Officer;

(12) to remit the fee chargeable on an application made for transfer of a stock-note from one circle to another under paragraph 6 of Resolution No. 2566, dated the 20th August, 1885;

(13) to remit the fees chargeable on the following documents, namely:—

(*a*) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1898 (V of 1898), or of a translation thereof when the copy is given to an accused person,

(*b*) copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person,

(*c*) copy or translation of a judgment in a case other than a summons case, and copy of the heads of the Judge's charge to the jury, when the copy or translation is given under section 371 of the said Code to an accused person,

(*d*) copy or translation of the judgment in a summons case, when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail,

(*e*) copy of an order of maintenance when the copy is given under section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid,

(*f*) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which, on its being applied for under section 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment,

(*g*) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court,

(*h*) copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings,

(*i*) copies of judgments or depositions required by officers of the Police Department in the course of their duties;

(14) to direct that the fee chargeable on an application to a Collector, with respect either to liability to assessment or to the amount or rate of an assessment under the Indian Income-tax Act, 1918 (VII of 1918), shall be limited to one anna;

(15) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court of public office;

(16) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by the notification;

(17) to remit the fee chargeable on an application for the grant of a licence for the vend of stamp;

(18) to direct that no Court-fee shall be charged on an application for the repayment of a fine or any portion of a fine the refund of which has been ordered by competent authority;

(19) to remit the fees chargeable on applications for copies of documents detailed in clauses (4) and (13), *supra;*

(20) to remit the duty chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates on the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1913 (VII of 1913), provided that the said share or interest was registered in a branch register in the United Kingdom under the Indian Companies (Branch Registers) Act, 1900 (IV of 1900) and that such member was at the date of his decease domiciled elsewhere than in India;

(21) to remit the fees chargeable on applications presented to officer of land revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed;

(22) to remit the fee chargeable on applications and petitions presented to a Collector or any Revenue officer having jurisdiction equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the Province;

(23) (*a*) to remit the fees payable under Schedule II upon applications for the grant or renewal of licences or duplicates under the Indian Arms Rules, 1920, in respect of which a fee is payable under those rules, and

(*b*) to reduce to one anna all fees exceeding one anna payable under Schedule II upon other applications relating to licences or duplicates granted or renewed under the said rules;

(24) to remit the fees chargeable on applications for the grant of licences of the nature mentioned in items 8 and 9 of Schedule II appended to the Indian Explosives Rules, 1914, to possess gun-powder, other explosives or detonators required *bona fide* for blasting purposes;

(25) to remit as follows the fees on the property of any person subject to military law either under the Army Act (44 and 45 Vict., c. 58), or under the Indian Army Act, 1911 (VIII of 1911), who was killed or died of wounds inflicted, accident occurring or diseases contracted within three years before death while on active searvice in the war terminating on the 31st of August, 1921—

(*a*) where the amount of or value of property in respect of which the grant of Probate or Letters of Administration is made or which is specified in the certificate under the Succession Certificate Act, 1889, does not exceed Rs. 50,000 to remit the whole of the fees leviable in respect of that property,

(*b*) where the said amount or value exceeds Rs. 50,000 to remit the whole of the said fees in respect of the first Rs. 50,000, and

(*c*) where any property passes more than once in consequence of such deaths to remit in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property;

(26) to remit the fees leviable under Articles 11, 12 and 12 (*a*) of the First Schedule of the said Act, on the property of—

(*i*) any person subject to the Naval Discipline Act (29 and 30 Vict., c. 109), the Army Act (44 and 45 Vict., c. 58), the Air Force Act (7 and 8 Geo. V, c. 51) or the Indian Army Act, 1911 (VIII of 1911), who is killed or dies from wounds inflicted, accidents occurring or diseases contracted while on active service or on service which is of a warlike nature or involves the same risk as active service, and

(*ii*) any person being a Government servant, civil or military, who dies from wounds inflicted while in actual performance of his official duties in consequence of those duties,

(*a*) where the amount or value of property, in respect of which the grant of probate or letters of administration is made, or which is specified in the certificate under Part X of the Indian Succession Act, 1925, or in the certificate in the Bombay Regulation No. 8 of 1827, does not exceed Rs. 50,000, the whole of the fees leviable in respect of that property,

(*b*) where the said amount or value exceeds Rs. 50,000 the whole of the said fees in respect of the first Rs. 50,000;

(27) to remit the fees chargeable on applications presented to officers of Land Revenue for the suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883) or the Agriculturists' Loans Act, 1884 (XII of 1884);

(28) to remit the fees chargeable on applications for the grant of licences issued in accordance with the provisions of any rule made under section 9 of the Indian Petroleum Act, 1899 (VIII of 1899), for the possession of dangerous petroleum for use on motor vehicles and for its transport thereon for the purpose of use therein;

(29) to remit the fees chargeable on copies of decrees of Civil or Revenue Courts situate in the territories of His Highness the Gaekwar of Baroda forwarded to any Court in Bihar and Orissa for execution in pursuance of the provisions of section 44 of the Civil Procedure Code, 1908 (V of 1908):

(30) to reduce the fee chargeable on applications for the settlement of fair rents under section 85 of the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908), to the sum of eight annas for each tenant making or joining or joined in the application, a group of joint owner of a tenancy being treated for the purposes of this clause as a single tenant;

(31) to remit the fees chargeable on certified copies of entries in the record-of-rights furnished in accordance with any rules for the time being in force under the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908), after the final publication of such records-of-rights under section 83 (2) of that Act;

(32) to remit fees chargeable on applications or petitions of objection referring to any entry made or proposed to be made in—

(*a*) a draft record-of-rights prepared under Chapter XII of the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908),

(*b*) a draft record of praedial conditions prepared under section 107 of that Act,

(*c*) a draft statement prepared or a tenant's khatian written up under section 111 of the same Act,

(*d*) a draft record of landlord's privileged lands, prepared under Chapter XIV of the same Act,

(*e*) a draft record-of-rights and obligations prepared under Chapter XV of the same Act:

Provided that such applications or petitions are presented—

(*i*) in the case of the documents referred to in clauses (*a*), (*d*) and (*e*)—before the publication of the draft under sub-section (1) of section 83 of the said Act,

(*ii*) in the case of the documents referred to in clause (*b*)—before the publication of the draft under sub-section (1) of section 108 of the said Act, and

(*iii*) in the case of the documents referred to in clause (*c*)—before the publication of the draft under clause (5) of section 111 of the said Act;

(33) to reduce to the sum of eight annas the Court-fees in excess of eight annas chargeable on certified copies of entries in a record-of-rights of a village or a portion thereof maintained under the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908);

(34) to reduce the fees chargeable under clause (*iii*) of Article 17 of Schedule II of the Act on plaints relating to suits instituted in the Chota Nagpur Division under sections 87 (1), 111 (8), 120 (read with section 87), 130 (1) and 252 (1) of the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908) to the amount of an *ad valorem* fee in cases where the amount of such fee would be less than 15 rupees;

(35) to remit the fees chargeable—

(*a*) on certified copies of entries in record-of-rights furnished, in accordance with any rules for the time being in force, under the Orissa Tenancy Act, 1913 (Bihar and Orissa Act II of 1913), after the final publication of such records-of-rights under section 116 (2) of that Act,

(*b*) on any application for the deposit of rent in respect of which a fee is paid under section 70 (2) of the Orissa Tenancy Act, 1913 (Bihar and Orissa Act II of 1913),

(*c*) on applications or petitions of objection referring to any entry made or proposed to be made in a draft record-of-rights prepared under Chapter XI of the Orissa Tenancy Act, 1913 (Bihar and Orissa Act II of 1913): provided that such applications or petitions are presented before the publication of such draft record under section 116 (1) of the said Act;

(36) to reduce the fees chargeable under clause (*iii*) of Article 17 of Schedule II of the Act on plaints relating to suits instituted under section 130 of the Orissa Tenancy Act, 1913 (Bihar and Orissa Act II of 1913), to the amount of an *ad valorem* fee chargeable under Article 1, Schedule I of the Act in cases where the amount of such fee would be less than Rs. 15;

(37) to reduce to the sum of eight annas the fees in excess of eight annas chargeable on certified copies of entries in a record-of-rights of a village or a portion thereof maintained under the Orissa Tenancy Act, 1913 (Bihar and Orissa Act II of 1913);

(38) to declare that the proper fee to be charged upon an application to deposit in any Court, rent not exceeding the sum of fifteen rupees, shall be as follows:—

	Proper Fee.
If the amount deposited exceeds Rs. 2-8-0	.. One anna.
If the amount deposited exceeds Rs. 2-8-0 but does not exceed Rs. 5	.. Two annas.
If the amount deposited exceeds Rs. 5 but does not exceed Rs. 10	.. Four annas.
If the amount deposited exceeds Rs. 10 but does not exceed Rs. 15	.. Six annas.

Provided that no fee shall be chargeable on an application to deposit rent in respect of which a fee is chargeable under any rule framed under sub-section (2) of section 61 of the Bengal Tenancy Act, 1885 (VIII of 1885);

(39) to remit the fees chargeable on applications or petitions of objection referring to any entry made or proposed to be made in a draft record-of-rights prepared under Chapter X of Bengal Tenancy Act, 1885 (VIII of 1885), as amended by the Bengal Tenancy (Amendment) Act, 1898 (Bengal Act III of 1898): provided that such applications or petitions are presented before the publication of such draft record under section 103-A, sub-section (1) of the said Act;

(40) to remit the fees chargeable on certified copies of entries in record-of-rights furnished in accordance with any rules for the time being in force under the Bengal Tenancy Act, 1885 (VIII of 1885), after the final publication of such records-of-rights under section 103-A (2) of that Act;

(41) to remit the fees chargeable on copies of documents furnished by a District Magistrate to a pleader by the Court to defend a pauper accused of murder;

(42) to reduce the fees chargeable under clause (*iii*) of Article 17 of Schedule II of the Act on plaints relating to suits instituted under section 106 of the Bengal Tenancy Act, 1885 (VIII of 1885), to the amount of an *ad valorem* fee chargeable under Article 1 of Schedule I of the Act, in cases where the amount of such fee would be less than Rs. 15;

(43) to reduce to the sum of eight annas the Court-fees in excess of eight annas chargeable on certified copies of entries in a record-of-rights of a village or a portion thereof maintained under the Bengal Tenancy Act, 1885 (VIII of 1885);

(44) to direct that when a record-of-rights is being prepared under Chapter X of the Bengal Tenancy Act, 1885, in pursuance of an order made otherwise than under section 101, clause (*d*) of the latter Act, and any application is made under section 104, sub-section (2) of that Act for a settlement of rent the fee payable on such application shall not exceed the sum of eight annas for each tenant making or joined in such application;

(45) to remit the fees chargeable on applications made to a Magistrate under the Indian Motor Vehicles Act, 1914 (VIII of 1914), for the registration of a motor vehicle and for a licence to drive it;

(46) to remit the fees chargeable on applications made to a Collector for exemption, refund or abatement of income-tax or super-tax under the Indian Income-tax Act, 1918 (VII of 1918) or Super-tax Act, 1920 (XIX of 1920).

D.—BOMBAY.

The Government of Bombay Notification No. 590, dated 16th September, 1921, published in the *Bombay Government Gazette*, dated 22nd September, 1921.

Secretariat, Fort, Bombay, 16th September, 1921.

No. 590.—In exercise of the powers conferred by section 35 of the Court-Fees Act, 1870 (VII of 1870) as amended by Act XXXVIII of 1920, and in supersession of so much of all previous notifications under that section issued by the Governor-General in Council as relates to the reduction or remission of all or any of the fees mentioned in the First and Second Schedules to the said Act, in the territories under the administration of the Government of Bombay, the Governor in Council is pleased to make the following reductions and remissions of the fees mentioned in the First and Second Schedules to the said Act, namely:—

(1) To remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use and on applications for renewal of stamped paper which has become spoiled or unfit for use;

(2) to remit the fees chargeable on applications in writing, relating exclusively to the purchase of salt which is the property of the Government;

(3) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the

presiding Judge or officer, without summoning the defendant rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should, in his opinion, be refunded;

(4) to remit the fees chargeable on—

(*a*) copies of village settlement-records furnished to landholders and cultivators during the currency or at the termination of settlement operations,

(*b*) lists of fields extracted from village settlement-records for the purpose of being filed with petitions of plaint in Settlement Courts:

Provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement-records (other than lists of fields) extracted as aforesaid, which may be filed in any Court or office;

(5) to direct that the fee chargeable on appeals from orders under section 47 of the Code of Civil Procedure, 1908 (V of 1908) shall be limited to the amounts chargeable under Article 11 of the Second Schedule;

(6) to remit the fees chargeable on security-bonds for the keeping of the peace by, or good behaviour of, persons other than the executants;

(7) to remit the fees chargeable under Articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts or Revenue Courts or officers for the private use of persons applying for them:

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer;

(8) to remit the fees chargeable, under paragraph 4 of clause (*a*) and paragraph 2 of clause (*b*) of Article 1 of the Second Schedule, on applications or orders for the payment of deposits in case in which the deposit does not exceed Rs. 25 in amount:

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application;

(9) to remit, with reference to clause (*xi*) of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently, when made by persons who do not at the time of application hold the land;

(10) to remit the fees chargeable on application for loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884);

(11) to remit the fee chargeable on an application made by a person to the Collector under sub-section (2) of section 42 of the Indian Stamp Act, 1899 (II of 1899) for the return to that person or to the Registration Officer who impounded it, of a document impounded and sent to the Collector by a Registration Officer;

(12) to remit the fees chargeable on the following documents, namely:—

(*a*) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1898 (V of 1898) or of a translation thereof, when the copy is given to an accused person,

(*b*) copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person,

(*c*) copy or translation of a judgment in a case other than a summons case, and copy of the heads of the Judge's charge to the jury, when the copy or translation is given under section 371 of the Code to an accused person,

(*d*) copy or translation of the judgment in a summons case, when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail,

(*e*) copy of an order of maintenance, when the copy is given under section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid,

(*f*) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which on its being applied for under section 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment,

(*g*) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court,

(*h*) copies of all documents with any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceeding,

(*i*) copies of judgments or depositions required by officers of the Police Department in the course of their duties;

(13) to remit the fee chargeable on an application to a Collector, with respect either to liability to assessment or to the amount or rate of an assessment or for a refund of income-tax under the Indian Income-tax Act, 1918 (VII of 1918);

(14) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office;

(15) to direct that, when a part of an estate paying annual revenue to the Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter in a suit for the possession of, or to enforce a right of pre-emption in respect of, a fractional share of that part shall, for the purposes of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed five times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share;

(16) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by this notification;

(17) to remit the fee chargeable on an application for the grant of a licence for the vend of stamp;

(18) to direct that no Court-fee shall be charged on an application for the repayment of a fine or of any portion of a fine the refund of which has been ordered by competent authority;

(19) to remit the fees chargeable on applications for copies of documents detailed in clauses (4) and (13), *supra;*

(20) to remit the duty chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates on the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1913 (VII of 1913) provided that the said share or interest was registered in a Branch Register in the United Kingdom under the Indian Companies (Branch Registers) Act, 1900 (IV of 1900) and that such member was at the date of his decease domiciled elsewhere than in India;

(21) to remit the fees chargeable on applications presented to officers of land revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed;

(22) to remit the fee chargeable on applications and petitions presented to a Collector or any Revenue officer having jurisdiction equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the Province;

(23) (*a*) to remit the fees payable under Schedule II upon applications for the grant or renewal of licences or duplicates under the Indian Arms Rules, 1920, in respect of which a fee is payable under those Rules, and

(*b*) to reduce to one anna all fees exceeding one anna payable under Schedule II upon other applications relating to licences or duplicates granted or renewed under the said rules;

(24) to remit the fees chargeable on applications for the grant of licences of the nature mentioned in items 8 and 9 of Schedule II appended to the Indian Explosives Rules, 1914, to possess gun-powder, other explosives or detonators required *bona fide* for blasting purposes;

(25) to remit as follows the fees on the property of any person subject to military law either under the Army Act (44 and 45 Vict., c. 58) or under the Indian Army Act, 1911 (VIII of 1911), who is killed or dies of wounds inflicted, accident occurring or diseases contracted within three years before death while on active service in the present war:—

(*a*) where the amount of or value of property in respect of which the grant of Probate or Letters of Administration is made or which is specified in the certificate under the Succession Certificate Act, 1889, or in the certificate under Bombay Regulation No. 8 of 1827, does not exceed Rs. 50,000 to remit the whole of the fees leviable in respect of that property,

(*b*) where the said amount or value exceeds Rs. 50,000 to remit the whole of the said fees in respect of the first Rs. 50,000, and

(*c*) where any property passes more than once in consequence of such deaths to remit, in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property;

(26) to remit the fees chargeable on applications for mutations of names in respect of the property of any person subject to military law either under the Army Act (44 and 45 Vict., c. 58) or under the Indian Army Act, 1911 (VIII of 1911), who is killed or dies of wounds inflicted, accident occurring or disease contracted within twelve months before death while on active service in the present war;

(27) to remit the fees chargeable on applications presented to officers of Land Revenue for the suspension or remission of loans under the Land

Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884);

(28) to remit the fees chargeable on applications for the grant of licences issued in accordance with the provisions of any rule made under section 9 of the Indian Petroleum Act, 1899 (VIII of 1899), for the possession of dangerous petroleum for use on motor vehicles and for its transport thereon for the purpose of use therein;

(29) to remit the fees chargeable on copies of decrees of Civil or Revenue Courts situate in the territories of His Highness the Gaekwar of Baroda forwarded to any Court in British India for execution in pursuance of the provisions of section 44 of the Civil Procedure Code, 1908 (V of 1908);

(30) to remit the fees chargeable under the Second Schedule on agreements required by Rules 37, 43 and 52 of the Land Revenue Code Rules, 1921;

(31) to reduce to a uniform rate of four annas per copy the fee chargeable under Article 7 of the First Schedule on copies of decrees or orders having the force of a decree issued by Mamlatdars under the Mamlatdars Courts Act, 1906 (Bombay Act II of 1906);

(32) to remit the fees chargeable under Article 1 of the Second Schedule on all applications made to a Collector or other Revenue Officer, or to the Chief Controlling Revenue Authority, by any of the under-mentioned political pensioners, being the eldest sons or representatives of the ex-Amirs of Sindh and Sardars of note:—

District.	Number and Names of Pensioners.
Hyderabad. Thar Parkar. Sukkur.	(1) His Highness Mir Nur Muhammad Khan, son of Mir Hussain Ali Khan, Talpur. (2) His Highness Mir Fateh Khan, son of Mir Sher Mahomed Khan, Talpur. (3) Mir Fazl Hussain Khan, son of Mir Sohrab Khan, Talpur.

(33) to remit the fees chargeable in respect of the documents specified in the First or Second Schedule in the case of suits instituted before village munsifs under Chapter V of the Dekkhan Agriculturists' Relief Act, 1879 (XVII of 1879);

(34) to remit the fees chargeable on copies of documents furnished by a Court of Session or the High Court, or by the Sadar Court in Sindh, to a pleader appointed by the Court to defend a person accused of murder;

(35) to remit the fees chargeable under Article 1, clauses (*b*) and (*c*) of Schedule II on applications made to a Collector, or other Revenue Officer, or to any Chief Controlling Revenue or Executive Authority, for permission to cut and remove jungle wood for fuel, or thorns for fencing, from lands which are unalienated and unoccupied within the meaning of the Bombay Land Revenue Code, 1879;

(36) to remit the fees chargeable on certified copies on applications for certified copies of entries in record-of-rights maintained under the Bombay Land Revenue Code, 1879 (Bombay V of 1879, and on application for such copies when required for filing in Court under section 135-H of the Act;

(37) to remit the fees chargeable on certain copies of extracts from entries in record-of-rights maintained under the Bombay Land Revenue Code, 1879 (Bombay V of 1879), when such copies are attached to applications for the execution of Civil Court decrees;

(38) to remit the fees chargeable (*i*) on applications made to the excise officer-in-charge of the distillery or warehouse for the issue of a permit for the transport of country spirits, (*ii*) on applications made by the licences of intoxicating drug shops for transport permits of duty-paid drugs;

(39) to remit the fee chargeable on application made by the licences of opium shops or by farmers of the monopoly districts for transport permits;

(40) to remit the fees chargeable on applications for the grant of licences to tap toddy trees for domestic consumption in the Panch Mahals Districts;

(41) to remit the fees chargeable on applications made to village officers for copies of entries in the record-of-rights registers under section 135-K of the Bombay Land Revenue Code, 1879 (Bombay V of 1879).

E.—BURMA.

No. 41.—In exercise of the powers conferred by section 35 of the Court-Fees Act, 1870, as amended by the Devolution Act, 1920, and in supersession of the notifications set forth in schedule appended hereto, the Local Government is pleased to remit or reduce, as the case may be, in the whole of Burma the fees mentioned in the First and Second Schedules of the said Act to the extent detailed below:—

I. If the amount of the fee chargeable in any case involves a fraction of an anna, that fraction shall be remitted.

II. No fee shall be chargeable in respect of the following applications:—

A.—General.

1. Applications requesting that an enclosed petition may be forwarded to the person to whom it is addressed.

2. Applications made on behalf of Government by a Government officer or servant.

3. Applications for the return of documents filed in any Court or public office.

4. Applications for copies of documents in respect of which copies no Court-fee is chargeable.

5. Applications for repayment of deposits or payment of any sum the payment of which has been duly sanctioned by competent authority.

6. Applications for rectification in errors of assessment.

7. Applications for the advice of assistance of the Agricultural Department.

B.—Specific Enactments.

1. *Arms Act.*—Applications for the grant or renewal of arms licences or otherwise relating to such licences.

2. *Explosives Act.*—Applications for licences to possess gun-powder, other explosives or detonators required *bona fide* for blasting purposes.

3. *Government Loans Enactments.*—Applications for the grant, suspension or remission of loans under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884.

4. *Income-tax Act.*—Applications with respect either to liability to assessment or to the amount or rate of an assessment or for a refund of income-tax.

5. *Land Revenue Enactments*—

(*a*) Applications for permission to occupy Government land for purposes of cultivation.

(*b*) Applications for the suspension or remission of land revenue on the ground that a crop has not been sown or has failed.

(*c*) Applications for mutation of names in respect of the property of any person subject to military law either under Army Act, 1881 (44 and 45 Vict., c. 51), or under the Indian Army Act, 1911, who is killed or dies of wounds inflicted, accident occurring or disease contracted within twelve months before death while on active service in the Great War of 1914-18.

6. *Petroleum Act.*—Applications for the grant of licences for the possession of dangerous petroleum for use on motor vehicles and its transport thereon for the purpose of use therein.

7. *Salt Act.*—Applications to purchase salt belonging to Government.

8. *Stamp and Court-Fees Acts.* Applications for—

(*a*) refund of the amount paid to Government for stamped paper which has become spoiled or unfit for use or is no longer required for use;

(*b*) renewal of stamped paper which has become spoiled or unfit for use;

(*c*) return of documents impounded by Collector [Indian Stamp Act, 1899, section 42 (2)];

(*d*) a stamp vendor's licence.

III. The fee chargeable on appeals from orders under section 47 of the Code of Civil Procedure, 1908, shall be limited to the amounts chargeable under Article II of the Second Schedule.

IV. No Court-fees shall be chargeable upon copies in the following cases:—

(*a*) Copies of proceedings or orders supplied to applicants requiring such copies for their private use only, and not such presented to any public Court or officer.

(*b*) Copies of proceedings or orders supplied to Government officers or servants in the course of their duties.

(*c*) Copies of documents in connection with any legal proceedings which are required by or for any person duly retained on behalf of or at the expense of Government to assist in such legal proceedings.

(*d*) Copies directed to be furnished free of cost under the Criminal Procedure Code.

(*e*) Copies of decrees of Civil or Revenue Courts situated in the territories of His Highness the Gaekwar of Baroda forwarded to any Court in British India for execution in pursuance of the provisions of section 44 of the Civil Procedure Code, 1908.

(*f*) Copies of entries in settlement or supplementary survey maps and registers.

(*g*) Certified copies of such entries provided they relate to land standing in the name of, or occupied by, the applicant.

V. *Plaints.*—

(*a*) When a plaint disclosing a reasonable case on the merits is presented to any Civil Court or Revenue Officer in such a form that the presiding Judge or Officer without summoning the defendant rejects it,

not for any substantial defect, but on account of an entirely technical error in form only and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant, the value of the stamp on the plaint shall be refunded on its presentation to the Collector of the district with a certificate from the Judge or Officer who rejected it that it was rejected in the circumstances above described and that in his opinion the value of the stamp should be refunded.

(*b*) The value of the subject-matter of a suit for the possession of or to enforce a right of pre-emption in a fractional share of a holding assessed separately to land revenue shall, for the purpose of computing the amount of the fees chargeable in the suit, be deemed not to exceed five times such portion of the revenue assessed on the holding as may be payable rateably in respect of the share.

VI. *Probates and Letters of Administration.*—

(*a*) No fee shall be chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates in the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1913, provided that the said share or interest was registered in a branch register in the United Kingdom under the Indian Companies (Branch Registers) Act, 1900, and that such member was at the date of his decease domiciled elsewhere than in India.

(*b*) The fee chargeable on the property of any person subject to military law either under the Army Act (44 and 45 Vict., c. 58) or under the Indian Army Act, 1911, who is killed or dies of wounds inflicted, accident occurring or disease contracted within three years before death while on active service in the Great War of 1914-18 shall be remitted to the following extent:—

(*i*) where the amount of or value of property in respect of which the grant of probate or letters of administration is made or which is specified in the certificate under the Succession Certificate Act, 1889, or in the certificate under Bombay Regulation No. 8 of 1827 does not exceed Rs. 50,000—to remit the whole of the fees leviable in respect of that property;

(*ii*) where the said amount or value exceeds Rs. 50,000—to remit the whole of the said fees in respect of the first Rs. 50,000; and

(*iii*) where any property passes more than once in consequence of such deaths—to remit in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property.

VII. No fee shall be chargeable in respect of any bond prescribed by the Criminal Procedure Code.

F.—CENTRAL PROVINCES.

List of reductions and remissions authorised by the Governor in Council under section 35 of the Court-Fees Act, 1870.

No. 79-292-XI.—In exercise of the powers conferred by section 35 of the Court-Fees Act, 1870 (VII of 1870), as amended by the Devolution Act, 1920 (XXXVIII of 1920), and in supersession of all previous notifications under the said section, the Governor in Council is pleased to make the following reductions and remissions in the fees chargeable under the First and Second Schedules of the Act, namely:—

(*Note*:—The undermentioned rulings apply to Berar also, see *Central Provinces Gazette*, Notification No. 79-292-XI, dated the 22nd February, 1922, for Berar.)

(1) to direct that if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by this notification;

(2) to remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use or is no longer required for use and on applications for renewal of stamped paper which has become spoiled or unfit for use;

(3) to remit the fees chargeable on applications in writing relating exclusively to the purchase of salt which is the property of the Government;

(4) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil Court or Revenue Officer in such a form that the presiding Judge or Officer, without summoning the defendant, rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector together with a certificate from the Judge or Officer who rejected the plaint that it was rejected under the circumstances above described and that the value of the stamp should, in his opinion, be refunded;

(5) to remit the fees chargeable on—

(*a*) copies of village settlement-records furnished to landholders and cultivators during the currency or at the termination of settlement operations,

(*b*) lists of fields extracted from village settlement-records for the purpose of being filed with petitions to Settlement Officers:

Provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement-records (other than lists of fields) extracted as aforesaid, which may be in any Court or office;

(6) to direct that the fee chargeable on appeals from orders under section 47 of the Code of Civil Procedure, 1908 (Act V of 1908), shall be limited to the amounts chargeable under Article 11 of the Second Schedule;

(7) to remit the fees chargeable on security-bonds for the keeping of the peace by or good behaviour of persons other than the executants;

(8) to remit the fee payable under Article 1, clause (*c*) of the Second Schedule on an application or petition presented to the Local Government, when the application or petition is accompanied by a petition to the Government of India and contains merely a request that the petition may be forwarded to the Government of India;

(9) to remit the fees chargeable under Articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts or Revenue Officers for the private use of persons applying for them:

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer;

(10) to remit the fees chargeable, under paragraph 4 of clause (*a*) and paragraph 2 of clause (*b*) of Article 1 of the Second Schedule on application for orders for the payment of deposits in cases in which the deposit does not exceed Rs. 25 in amount:

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application;

(11) to remit, with reference to clause (*xi*) of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently when made by persons who do not at the time of application hold the land;

(12) to remit the fees chargeable on applications for loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884);

(13) to remit the fees chargeable on applications presented to officers of Land Revenue for the suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884);

(14) to remit the fee chargeable on an application made by a person to the Collecor under sub-section (2) of section 42 of the Indian Stamp Act, 1899 (II of 1899) for the return to that person, or to the Registration Officer who impounded it of a document impounded and sent to the Collector by a Registration Officer;

(15) to remit the fees chargeable on the following documents, namely:—

(*a*) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1898 (V of 1898) or of a translation thereof, when the copy is given to an accused person,

(*b*) copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person,

(*c*) copy or translation of a judgment in a case other than a summons case, and copy of the heads of the Judge's charge to the jury, when the copy or translation is given under section 371 of the said Code to an accused person,

(*d*) copy or translation of the judgment in a summons case when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail,

(*e*) copy of an order of maintenance, when the copy is given under section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid,

(*f*) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which, on its being applied for under section 548 of the said Code, the Judge or Magistrate for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment,

(*g*) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court,

(*h*) copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings,

(*i*) copies of judgments or depositions required by officers of the Police Department in the course of their duties;

(16) to direct that the fee chargeable on an application to a Collector with respect either to liability to assessment or to the amount or rate of an assessment under the Indian Income-tax Act, 1918 (VII of 1918) shall be limited to one anna;

(17) to remit the fee chargeable on an application to a Collector for exemption, refund or abatement of income-tax under the Indian Income-tax Act, 1918 (VII of 1918);

(18) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office;

(19) to direct that, when a part of an estate paying annual revenue to the Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value, of the subject-matter of a suit for the possession of, or to enforce a right of pre-emption in respect of a fractional share of that shall, for the purposes of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed five times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share;

(20) to remit the fee chargeable on an application for the grant of a licence for the vend of stamps;

(21) to direct that no Court-fee shall be charged on an application for the repayment of a fine or of any portion of a fine the refund of which has been ordered by competent authority;

(22) to remit the fees chargeable on applications for copies of documents detailed in clauses (4) and (13), *supra;*

(23) to remit the duty chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates on the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1913 (VII of 1913), provided that the said share or interest was registered in a branch register in the United Kingdom under the Indian Companies (Branch Registers) Act, 1900 (IV of 1900), and that such member was at the date of his disease domiciled elsewhere than in India;

(24) to remit the fees chargeable on applications presented to officers of land revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed;

(25) to remit the fee chargeable on applications and petitions presented to a Collector or any revenue officer having jurisdiction equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the Province;

(26) (*a*) to remit the fees payable under Schedule II upon applications for the grant of renewal of licences or duplicates under the India Arms Rules, 1920, in respect of which a fee is payable under those Rules, and

(*b*) to reduce to one anna all fees exceeding one anna payable under Schedule II upon other applications relating to licences or duplicates granted or renewed under the said rules;

(27) to remit the fees chargeable on applications to the grant of licences of the nature mentioned in items 8 and 9 of Schedule II appended to the Indian Explosives Rules, 1914, to possess gun-powder, other explosives or detonators required *bona fide* for blasting purposes;

(28) to remit as follows the fees on the property of any person subject to military law either under the Army Act (44 and 45 Vict., c. 58) or under the Indian Army Act, 1911 (VIII of 1911), who is killed or dies of wounds inflicted, accident occurring or disease contracted within three years before death while on active service in the "present" war:—

(*a*) where the amount or value of property in respect of which the grant of probate or letters of administration is made or which is specified in the certificate under the Succession Certificate Act, 1889 (VII of 1889), does not exceed Rs. 50,000 to remit the whole of the fees leviable in respect of that property,

(*b*) where the said amount or value exceeds Rs. 50,000 to remit the whole of the said fees in respect of the first Rs. 50,000, and

(*c*) where any property passes more than once in consequence of such deaths to remit in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property;

(29) to remit the fees chargeable on applications for mutations of names in respect of the property of any person subject to military law either under the Army Act (44 and 45 Vict., c. 58) or under the Indian Army Act, 1911 (VIII of 1911), who is killed, or dies of wounds inflicted, accident occurring or disease contracted within twelve months before death while on active service in the present war;

(30) to remit the fees chargeable on applications for the grant of licences issued in accordance with the provisions of any rule made under section 9 of the Indian Petroleum Act, 1899 (VIII of 1899) for the possession of dangerous petroleum for use on motor vehicles and for its transport thereon for the purpose of use therein;

(31) to remit the fees chargeable on copies of decrees of Civil or Revenue Courts situate in the territories of His Highness the Gaekwar of Baroda forwarded to any Court in the Central Provinces for execution in pursuance of the provisions of section 44 of the Civil Procedure Code, 1908 (V of 1908);

(32) to remit the fees chargeable on applications presented to Courts with reference to Rule 2, Order 21, First Schedule, Code of Civil Procedure, 1908 (Act V of 1908), in relation to awards made in the course of conciliation proceedings held with the sanction of the Local Government;

(33) to remit the fee chargeable on copies of documents furnished by a District Magistrate, a Sessions Judge or the Registrar of the Judicial Commissioner's Court, to a counsel engaged by Government to appear in defence of a pauper accused.

G.—N.-W. PROVINCES.

Resolution No. 560|VII—419, dated the 3rd May, 1921 reads:—Under section 35 of the Court-Fees Act (VII of 1870), as amended by the Devolution Act (XXXVIII of 1920) and in supersession of all previous notifications under the section, it is hereby notified that in exercise of the power to reduce or remit, in the whole or in any part of the territories under his administration all or any of the fees mentioned in the First and Second Schedules to the said Act, the Governor in Council has been pleased in respect of the whole of the territories under his administration to make the reductions and remissions hereinafter set forth, *viz.*:—

* * * *

3. To direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or officer without summoning the defendant, rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an

application to the Collector of the district in which the Court is situated together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should, on his opinion, be refunded.

4. To remit the fees chargeable on—

(*a*) copies of village settlement records furnished to land-holders and cultivators during the currency or at the termination of settlement operations;

(*b*) list of fields extracted from village settlement records for the purpose of being filed with petitions of plaint to Settlement Courts:

Provided that nothing in this clause shall apply to copies of judicial proceedings or to copies of village settlement records (other than lists of fields) extracted as aforesaid, which may be filed in any Court or office.

5. To direct that the fees chargeable on appeals from orders under section 47 of the Code of Civil Procedure, 1908 (Act V of 1908) shall be limited to the amounts chargeable under Article 11 of the Second Schedule.

* * * *

7. To remit the fees chargeable under Articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts or Revenue Courts or offices for the private use of persons applying for them:

Provided that nothing in the clause apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer.

8. To remit the fees chargeable under paragraph 4 of clause (*a*) and paragraph 2 of clause (*b*) of Article 1 of the Second Schedule, on application for orders for the payment of deposits in cases in which the deposit does not exceed Rs. 25 in amount:

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the applications.

* * * *

12. To remit the fees chargeable on the following documents, namely:—

* * * *

(*g*) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleaders or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court;

(*h*) copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings;

(*i*) copies of judgments or depositions required by officers of the Police department in the course of their duties.

* * * *

14. To remit the fees chargeable on an application presented by any person for the return of a document filed by him in any Court or public office.

15. To direct that when a part of an estate paying annual revenue to the Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession of, or to enforce a right of pre-emption in respect of a fractional share of that part shall for the purposes of the computation of the amount of the fee chargeable in the

suit, be deemed not to exceed five times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share.

16. To direct that, if the amount of the fee chargeables in any case involve a fraction of an anna, the fraction shall be remitted except where otherwise expressly provided by this notification.

17. To remit the fee chargeable on an application for the grant of licence for the vend of stamps.

18. To direct that no Court-fee shall be charged on an application for the repayment of a fine or of any portion of a fine the refund of which has been ordered by competent authority.

19. To remit the fee chargeable on applications for copies of documents detailed in clauses (4) and (12), *supra*.

20. To remit the duty chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates on the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1913 (VII of 1913) provided that the said share or interest was registered in a branch register in the United Kingdom under the Indian Companies (Branch Registers) Act, 1900 (IV of 1900) and that such member was at the date of his decease domiciled elsewhere than in India.

* * * *

25. To remit as follows the fees on the property of any person subject to military law either under the Army Act (44 and 45 Vict., c. 58) or under the Indian Army Act, 1911 (VIII of 1911) who is killed or dies of wounds inflicted, accident occurring or disease contracted within three years before death while on active service in the late war:—

(*a*) Where the amount or value of property in respect of which the grant of Probate or Letters of Administration is made or which is specified in the certificate under the Succession Certificate Act, 1889 or in the certificate under Bombay Regulation No. 8 of 1827 does not exceed Rs. 50,000, to remit the whole of the fees leviable in respect of that property.

(*b*) Where the said amount or value exceeds Rs. 50,000, to remit the whole of the said fees in respect of the first Rs. 50,000; and

(*c*) where any property passes more than once in consequence of such deaths, to remit in the case of second and subsequent successions the whole of the said fees irrespective of the value or amount of such property.

* * * *

29. To remit the fees chargeable on copies of decrees of Civil Courts situate in the territories of His Highness the Gaekwar of Baroda forwarded to any Court in British India for execution in pursuance of the provisions of section 44 of the Civil Procedure Code, 1908 (V of 1908).

30. To reduce to eight annas the fee chargeable on a copy of any number of entries in a settlement record relating to any one village in Kumaun or Garhwal.

* * * *

32. (1) To remit the fees payable on all documents filed, exhibited or recorded in or furnished by the Court of the Special Judge under the Bundelkhand Encumbered Estates Act, 1903 (United Provinces Act I of 1903).

(2) To remit the fees payable on all documents connected with the proceedings in the Court of the Commissioner under the Act except on memoranda of appeal and on applications for revision of any decision or order of the Special Judge under Chapter VI thereof.

(3) To reduce to eight annas the fee payable on any appeal against a decision of the Special Judge under Chapter VI of the Act.

* * * *

J.—MADRAS.

Government of India Notification No. 5563-*J., dated 7th September,* 1911, Fort St. George Gazette, *Part I, p.* 884.

No. 358.—Under section 35 of the Court-Fees Act, 1870 (VII of 1870), as amended by section 4 of Act XXXVIII of 1920 and in supersession of all previous notifications on the subject, it is hereby notified that, in exercise of the power to reduce or remit, in the Presidency of Fort St. George, all or any of the fees mentioned in the First and Second Schedules to the said Act, the Governor in Council has been pleased to make the reductions and remissions hereinafter set forth, namely:—

(1) to remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use and on applications for renewal of stamped paper which has become spoiled or unfit for use;

(2) to remit the fees chargeable on applications in writing, relating exclusively to the purchase of salt which is the property of the Government;

(3) (*a*) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or officer, without summoning the defendant, rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated, together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should, in his opinion, be refunded;

[1] (*b*) to remit the fees now chargeable under Article 1 (*d*) (*ii*) of Schedule II of Madras Court-Fees (Amendment) Act, 1922 (V of 1922), on applications or petitions presented to the High Court for refund of Court-fees paid under a mistake or by misdirection;

(4) to remit the fees chargeable on—

(*a*) copies of village settlement-records furnished to landholders and cultivators during the currency or at the termination of settlement operations,

(*b*) lists of fields extracted from village settlement-records for the purpose of being filed with petitions of plaint in Settlement Courts:

Provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement-records (other than lists of fields) extracted as aforesaid, which may be filed in any Court or office;

(5)[1] to direct that the fee chargeable on appeals from orders under section 47 of the Code of Civil Procedure, 1908 (Act V of 1908) shall be limited to the amounts chargeable under Article 11 of the Second Schedule;

(6) to remit the fees chargeable on security-bonds for the keeping of the peace by, or good behaviour of, persons other than the executants;

[1] Notification No. 34 Law (General), dated 5th January, 1927, *Fort St. George Gazette,* Pt. I, p. 110.

(7) to remit the fees chargeable under Articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts or Revenue Courts or officers for the private use of persons applying for them:

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer;

(8) to remit the fees chargeable, under paragraph 4 of clause (*a*) and paragraph 2 of clause (*b*) of Article 1 of the Second Schedule, on applications for orders for the payment of deposits in cases in which the deposit does not exceed Rs. 25 in amount:

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application;

(9) to remit, with reference to clause (*xi*) of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently, when made by persons who do not at the time of application, hold the land;

(10) to remit the fee chargeable on applications for loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884);

(11) to remit the fee chargeable on an application made by a person to the Collector under sub-section (2) of section 42 of the Indian Stamp Act, 1899 (II of 1899), for the return to that person, or to the Registration Officer who impounded it, of a document impounded and sent to the Collector by a Registration Officer;

(12) to remit the fees chargeable on the following documents, namely:—

(*a*) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1898 (Act V of 1898), or of translation thereof, when the copy is given to an accused person,

(*b*) copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person,

(*c*) copy or translation of a judgment in a case other than a summons case, and copy of the heads of the Judge's charge to the jury when the copy or translation is given under section 371 of the said Code to an accused person,

(*d*) copy or translation of the judgment in a summons case, when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail,

(*e*) copy of an order of maintenance, when the copy is given under section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid,

(*f*) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which on its being applied for under section 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment,

(*g*) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court,

(*h*) copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings,

(*i*) copies of judgments or depositions required by officers of the Police Department in the course of their duties;

(13) to remit the fee chargeable on an application to a Collector for exemption, refund or abatement of income-tax;

(14) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office;

(15) to direct that, when a part of an estate paying annual revenue to the Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession of, or to enforce a right of pre-emption in respect of, a fractional share of that part shall, for the purposes of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed [1]ten times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share;

(16) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted except where otherwise expressly provided by this notification;

(17) to remit the fee chargeable on an application for the grant of a licence for the vend of stamp;

(18) to direct that no Court-fee shall be charged on an application for the repayment of a fine or of any portion of a fine the refund of which has been ordered by competent authority;

(19) to remit the fees chargeable on applications for copies of documents detailed in clauses 4 and 12, *supra;*

(20) to remit the duty chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates on the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1913 (VII of 1913), provided that the said share or interest was registered in a branch register in the United Kingdom under the Indian Companies (Branch Registers) Act, 1900 (VI of 1900), and that such member was at the date of his decease domiciled elsewhere than in India;

(21) to remit the fees chargeable on applications presented to officers of land revenue for the suspension or remission of revenue on the ground that a crop has been sown or has failed;

(22) to remit the fee chargeable on applications and petitions presented to a Collector or any Revenue Officer having jurisdiction equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the Province;

(23) (*a*) to remit the fees payable under Schedule II upon applications for the grant or renewal of licences or duplicates under the Indian Arms Rules, 1924,[2] in respect of which a fee is payable under those Rules.

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[1] The word "ten" was substituted for the word "five" by Notification No. 421 Law (General), dated 1st September, 1922, *Fort St. George Gazette,* Pt. I, p. 896.

[2] Notification No. 508 Law (General), dated 6th August, 1924, *Fort St. George Gazette,* Pt. I, p. 926.

(*b*) to reduce to one anna all fees exceeding one anna payable under Schedule II upon other applications relating to licences or duplicates granted or renewed under the said rules,

[1] (*c*) to reduce to Rs. 15 the fees chargeable under Schedule II on a memorandum of second appeal in a suit of the classes mentioned in Article 17-A or 17-B and instituted in the Court of a District Munsif,

[2] (*d*) to remit the fee payable under Article 10 of Schedule II by Advocates on memorandum of appearance filed by them when appearing for the accused in criminal cases,

[3] (*e*) to reduce to Rs. 15 the fees chargeable under Schedule II on a memorandum of second appeal in a suit of the class mentioned in Article 17-B or instituted in a Revenue Court, and

[4] (*f*) to remit the fee chargeable under Article 10 of Schedule II of the Madras Court-Fees (Amendment) Act, 1922 (Madras Act V of 1922) in respect of a vakalatnama or any paper signed by an Advocate signifying or intimating that he is retained for a party, when presented to any Criminal Court for the conduct of any prosecution on behalf of a Municipal Council to which the Madras District Municipalities Act, 1920 (Madras Act V of 1920) applies or on behalf of the Corporation of Madras or a Local Board to which the Madras Local Boards Act, 1920 (Madras Act XIV of 1920) applies;

(24) to remit the fees chargeable on applications for the grant of licences of the nature mentioned in items 8 and 9 of Schedule II appended to the Indian Explosive Rules, 1914, to possess gunpowder, other explosives or detonators required *bona fide* for blasting purposes;

(25) to remit the fees chargeable on applications presented to officers of Land Revenue for the suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884);

(26) to remit the fees chargeable on applications for the grant of licences issued in accordance with the provisions of any rule made under section 9 of the Indian Petroleum Act, 1899 (VIII of 1899), for the possession of dangerous petroleum for use on motor-vehicles and for its transport thereon for the purpose of use therein;

(27) to remit the fees chargeable on copies of decrees of Civil or Revenue Courts situate in the territories of His Highness the Gaekwar of Baroda forwarded to any Court in the Presidency of Fort St. George for execution in pursuance of the provisions of section 44 of the Civil Procedure Code, 1908 (Act V of 1908);

(28) to direct the fee chargeable on the following documents filed in claims preferred under the Madras Hereditary Village Officers Act, 1895 (Madras Act III of 1895), shall be limited to the sum specified below against each, namely:—

plaint, petition for execution or memorandum of appeal to a Collector—eight annas;

memorandum of appeal to the Board of Revenue—two rupees;

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[1] Added by Notification No. 607 Law (General), dated 8th December, 1922. Vide *Fort St. George Gazette*, Pt. I, p. 1372.

[2] Added by Notification No. 20 Law (General), dated 23rd March, 1925, *Fort St. George Gazette*, Pt. I, p. 596.

[3] Inserted by Notification No. 296 Law (General), dated 15th April, 1926, *Fort St. Gazette*, Pt. I, p. 786.

[4] Added by Notification No. 67 Law (General), dated 25th January, 1927, *Fort St. George Gazette*, Pt. I, p. 210.

(29) to remit the fees chargeable (*a*) on copies of judgment, decrees or orders passed on claims preferred under the Madras Hereditary Village Offices Act, 1895 (Madras Act III of 1895), and (*b*) on applications filed by either party in the course of the trial of suits or appeals or in the course of execution of decrees under the said Act;

(30) to reduce the fees chargeable in suits by Government ryots, for the recovery of land sold for arrears of revenue, to the amount which would be chargeable if the value of the subject-matter were only the rent of the land payable for the year next before the date of presentation of the plaint;

(31) to remit the fees chargeable on applications made by toddy-drawers and shop-keepers for the grant of licences permitting them or their servants to draw toddy from cocoanut and other palms;

(32) to remit the fees chargeable on all communications made under Chapter II of the Madras Proprietary Estates Village Service Act, 1894 (Madras Act II of 1894), by a proprietor to any Revenue Officer relating to the appointment and control of village officers;

(33) to remit the fees chargeable on the following applications made by cultivators of the hemp plant (*Cannabis Sativa or Indica*) in the Madras Presidency:—

(1) Application for a licence to cultivate the hemp plant (*Cannabis Sativa* or *Indica*);

(2) Application for permission to harvest a crop of hemp plant and manufacture intoxicating drugs therefrom; and

(3) Application for a permit to transport intoxicating drugs extracted from the hemp plant;

(34) to remit the fee chargeable on applications made by distillers and warehouse-keepers in the Madras Presidency to the Excise Officer in charge of the distillery or warehouse for the issue of a permit for the transport of country spirit;

(35) to remit the fees chargeable in respect of plaints in suits instituted before the Collector under sections 55, 56, 95, 112, 144 and 160 of the Madras Estates Land Act, 1908 (Madras Act I of 1908), and in respect of objection petitions presented to the Revenue Officer under section 166 (1) of the same Act;

(36) to remit the fees chargeable on applications, petitions and copies which are filed, exhibited or recorded in, or received or furnished by, village[1] Courts and plaints and complaints filed and information laid in Panchayat Courts constituted under the Madras Village Courts Act, 1889 (Madras Act I of 1889), as amended by Madras Act II of 1920;

(37) to remit the fees chargeable on applications for transfer of registry in the revenue accounts in respect of ryotwari holdings in the Madras Presidency;

(38) to remit the fees chargeable on applications, for transfer of registry in the land records of house-sites in towns in the Madras Presidency;

to reduce the fee now chargeable under Article 1 of Schedule I of the Madras Court-Fees (Amendment) Act, 1922 (V of 1922), in respect of a plaint, or written statement pleading a set off or counter-claim presented

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[1] Amended and added by Notification Nos. 61 Law (General), dated 25th January, 1922 and 421 Law (General), dated 17th July, 1923, published in the *Fort St. George Gazette*, Pt. I, pp. 98, 99 and 768 respectively.

to a Court outside the Presidency Town in any suit filed as a small cause suit, when the amount or value of the subject-matter exceeds Rs. 500, but does not exceed Rs. 1,000, to twelve annas for every ten rupees or part thereof of such amount or value: Provided that the full fee shall become payable if, for any reason, the suit cannot be tried as a small cause suit.

[1] No. 359.—Under section 35 of the Court-Fees Act, 1870 (VII of 1870), as amended by section 4 of Act XXXVIII of 1920 and in supersession of all previous notifications on the subject it is hereby notified that, in exercise of the power to reduce or remit, in the Presidency of Fort St. George all or any of the fees mentioned in the First and Second Schedules to the said Act, the Governor in Council has been pleased to make the reductions and remissions hereinafter set forth, namely,

(39) (1) to remit as follows the fees on the property of any person subject to military law either under the Army Act, (44 and 45 Vict. c. 58) or under the Indian Army Act, 1911 (VIII of 1911), who is killed or dies of wounds inflicted, accident occurring or diseases contracted within three years before death while on active service in the present war:—

(*a*) Where the amount of or value of property in respect of which the grant of probate or letters of administration is made or which is specified in the certificate under the Succession Certificate Act, 1889, or in the certificate under Bombay Regulation No. 8 of 1827 does not exceed Rs. 50,000 to remit the whole of the fees leviable in respect of that property,

(*b*) where the said amount or value exceeds Rs. 50,000 to remit the whole of the said fees in respect of the first Rs. 50,000, and

(*c*) when any property passes more than once in consequence of such deaths to remit in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property.

(2) to remit the fees chargeable on applications for mutations of name in respect of the property of any person subject to military law either under the Army Act (44 and 45 Vict., c. 58) or under the Indian Army Act, 1911 (VII of 1911), who is killed, or dies of wounds inflicted, accident occurring or diseases contracted within twelve months before death while on active service in the present war;

[2] (40) to remit the fees chargeable under Article 1 of Schedule II of the Court-Fees Act, 1870 (VII of 1870) as amended by the Madras Court-Fees (Amendment) Act, 1922 (Madras Act V of 1922) in respect of applications to which the first paragraph of the said article applies made by consular officers in pursuance of their official functions to officers of the Customs Department.

[3] No. 180.—In exercise of the powers conferred on them by section 35 of the Court-Fees Act, 1870 (VII of 1870), as amended by the Devolution Act, 1920 (XXXVIII of 1920), and the Madras Court-Fees (Amendment) Act, 1922 (Madras Act V of 1922), and in supersession of paragraph 1 of Part II of Notification No. 359, Law (General), dated 12th September, 1921, published at page 1011 of Part I of the *Fort St. George Gazette*, dated 11th October, 1921, the Local Governments are pleased to make, in the Presidency of Madras, the remissions hereinafter set forth in the fees

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[1] Notification No. 359 Law (General), dated 12th September, 1931, *Fort St. George Gazette*, Pt. I, p. 1011.

[2] Notification No. 809 Law (General), dated 22nd October, 1928, *Fort St. George Gazette*, Pt. I, p. 1702.

[3] The above is Notification No. 180 Law (General), dated 20th February, 1926, *Fort St. George Gazette*, Pt. I, pp. 400 and 401.

leviable under Articles 11 and 12 of the First Schedule to the said Act on the property of—

(1) Any person subject to the Naval Discipline Act (29 and 30 Vict., c. 109), the Army Act (44 and 45 Vict., c. 58), the Air Force Act (7 and 8 Geo. 5, c. 51) or the Indian Army Act, 1911 (VII of 1911), who is killed or dies from wounds inflicted, accidents occurring or diseases contracted while on active service or on service which is of a warlike nature or involves the same risk as active service, and

(2) any person being a Government servant, civil or military, who dies from wounds inflicted while in actual performance of his official duties or in consequence of those duties,

Remissions.

(*a*) when the amount or value of the property, in respect of which the grant of probate or letters of administration is made, or which is specified in the certificate under Part X of the Indian Succession Act, 1925, does not exceed Rs. 50,000 the whole of the fees leviable in respect of that property;

(*b*) where the said amount or value exceeds Rs. 50,000 the whole of the said fees in respect of the first Rs. 50,000.

H.—THE PUNJAB.

The following notification issued by the Punjab Government under the Court-Fees Act, reducing and remitting fees, is published for information and guidance:—

The 27th March, 1922.

No. 10495.—Under section 35 of the Court-Fees Act, 1870, as modified by the Devolution Act, 1920, and in supersession of all previous notifications under that section, it is hereby notified that in exercise of the power to reduce or remit in the territories administered by the Governor of the Punjab, all or any of the fees mentioned in the First and Second Schedules to the said Act, the Governor of the Punjab has been pleased to make the reductions and remissions hereinafter set forth, namely—

1. To remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use and no applications for renewal of stamped paper which has become spoiled or unfit for use.

2. To remit the fees chargeable on applications in writing, relating exclusively to the purchase of salt which is the property of the Government.

3. To direct that, when a plaint disclosing a reasonable case of the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or Officer without summoning the defendant rejects it, not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the District in which the Court is situated, together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should, in his opinion, be refunded.

4. To remit the fees chargeable on—

(*a*) copies of village settlement-records furnished to land-holders and cultivators during the currency or at the termination of settlement operations;

(*b*) list of fields extracted from village settlement-records for the purpose of being filed with petitions of plaint in Settlement Courts:

Provided that nothing in this cause shall apply to copies of judicial proceedings, or to copies of village settlement-records (other than lists of fields) extracted as aforesaid, which may be filed in any Court or office.

5. To direct that the fee chargeable on appeals from orders under section 47 of the Code of Civil Procedure, 1908, shall be limited to the amount chargeable under Article 11 of the Second Schedule.

6. To remit the fees chargeable on security-bonds for the keeping of the peace by, or good behaviour of, persons other than the executants.

7. To remit the fee payable under Article 1, clause (*e*), of the Second Schedule on an application or petition presented to a Chief Revenue or Executive authority, or to any Chief Officer charged with the executive administration of a Division, when the application or petition is accompanied by a petition to the Government of India and contains merely a request that that petition may be forwarded to the Government of India.

8. To remit the fees chargeable under Articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts or Revenue Courts or offices for the private use of persons applying for them:

Provided that nothing in the clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer.

9. To remit the fees chargeable under paragraph 4 of clause (*a*) and paragraph 2 of clause (*b*) of Article 1 of the Second Schedule on applications for orders for the payment of deposits in cases in which the deposit does not exceed Rs. 25 in amount:

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application.

10. To remit, with reference to clause (*xi*) of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently, when made by persons who do not at the time of application hold the land.

11. To remit the fees chargeable on applications for loans under the Land Improvement Loans Act, 1883 (XIX of 1883) or the Agriculturists' Loans Act, 1884 (XII of 1884).

12. To remit the fees chargeable on applications presented to officers of Land Revenue for the suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884).

13. To remit the fee chargeable on an application made by a person to the Collector under sub-section (2) of section 42 of the Indian Stamp Act, 1899 (II of 1899), for the return to that person, or to the Registration Officer who impounded it, of a document impounded and sent to the Collector by a Registration Officer.

14. To remit the fees chargeable on the following documents, namely:—

(*a*) Copy of the charge framed under section 210 of the Code of Criminal Procedure, 1898, or of a translation thereof, when the copy is given to an accused person.

(*b*) Copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person.

(*c*) Copy or translation of a judgment in a case other than a summons case and a copy of the heads of the Judge's charge to the jury, when the copy or translation is given under section 371 of the said Code to an accused person.

(*d*) Copy or translation of the judgment in a summons case, when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail.

(*e*) Copy of an order of maintenance, when the copy is given under section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid.

(*f*) Copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which on its being applied for under section 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment.

(*g*) Copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court.

(*h*) Copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings.

(*i*) Copies of judgments or depositions required by officers of the Police Department in the course of their duties.

15. To direct that the fee chargeable on an application to a Collector, with respect either to liability to assessment or to the amount or rate of an assessment or for a refund of income-tax under the Indian Income-tax Act, 1918, shall be limited to one anna.

16. To remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office.

17. To direct that, when a part of an estate paying annual revenue to the Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession of, or to enforce a right of pre-emption in respect of, a fractional share of that part shall, for the purposes of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed five times such portion of the revenue separately assessed on the part as may be rateably payable in respect of the share.

18. To direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by this notification.

19. To remit the fee chargeable on an application for the grant of a licence for the vend of stamps.

20. To direct that no Court-fee shall be charged on an application for the repayment of a fine or of any portion of a fine the refund of which has been ordered by competent authority.

21. To remit the fees chargeable on applications for copies of documents detailed in clauses 4 and 13, *supra*.

22. To remit the duty chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates on the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1913 (VII of 1913): provided that the said share or interest was registered in the branch register in the United Kingdom under the Indian Companies (Branch Registers) Act, 1900 (IV of 1900), and that such member was at the date of his decease domiciled elsewhere than in India.

23. To remit the fees chargeable on applications presented to officers of land revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed.

24. To remit the fee chargeable on applications and petitions presented to a Collector or any Revenue Officer having jurisdiction equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the province.

25. To remit the fee chargeable on applications for the grant of licences issued in accordance with the provisions of any rule made under section 9 of the Indian Petroleum Act, 1899 (VIII of 1899), for the possession of dangerous petroleum for use on motor vehicles and for its transport thereon for the purpose of use therein.

26. (*a*) To remit the fees payable under Schedule II upon application for the grant or renewal of licence or duplicates under the Indian Arms Rules, 1920, in respect of which a fee is payable under those rules, and

(*b*) To reduce to one anna all fees exceeding one anna payable under Schedule II upon other applications relating to licences or duplicates granted or renewed under the said rules.

27. To remit the fees chargeable on applications for the grant of licences of the nature mentioned in items 8 and 9 of Schedule II appended to the Indian Explosives Rules, 1914, to possess gun-powder, other explosives or detonators required *bona fide* for blasting purposes.

28. To remit as follows the fees on the property of any person subject to military law either under the Army Act (44 and 45 Vict., c. 58) or under the Indian Army Act, 1911 (VIII of 1911), who is killed or dies of wounds inflicted, accident occurring or disease contracted within three years before death while on active service in the war of 1914-19:—

(*a*) where the amount of or value of property in respect of which the grant of probate or letters of administration is made or which is specified in the certificate under the Succession Certificate Act, 1889, or in the certificate under Bombay Regulation No. 8 of 1827, does not exceed Rs. 50,000, to remit the whole of the fees leviable in respect to that property;

(*b*) where the said amount or value exceeds Rs. 50,000, to remit the whole of the said fees in respect of the first Rs. 50,000; and

(*c*) where any property passes more than once in consequence of such death to remit, in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property.

29. To remit the fees chargeable on applications for mutations of names in respect of the property of any person subject to military law either under the Army Act (44 and 45 Vict., c. 58) or under the Indian Army Act, 1911 (VIII of 1911), who is killed or dies of wounds inflicted, accident occurring

or disease contracted within twelve months before death while on active service in the war of 1914-19.

30. To remit the fees chargeable on copies of decrees of Civil or Revenue Courts situate in the territories of His Highness the Gaekwar of Baroda forwarded to any Court in British India for execution in pursuance of the provisions of section 44 of the Civil Procedure Code, 1908 (V of 1908).

31. To remit the fees chargeable on copies of orders or proceedings under section 37 of the Punjab Land Revenue Act, 1887 (XVII of 1887), made or recorded by Collectors or other Revenue Officers engaged in revising a record-of-rights, under a notification published in accordance with section 32 of the said Act:

Provided that the copy is furnished for the purpose of being filed with an application or petition to a Collector or other Revenue Officer engaged as aforesaid in revising a record-of-rights or to the Commissioner of the Division, or to the Financial Commissioner, Punjab, relating to matters connected with the assessment of land or the ascertainment of rights thereto, or interests therein, if presented previous to the final confirmation of such revision.

32. To remit the fees chargeable on applications under section 97 of the Punjab Land Revenue Act, 1887 (XVII of 1887), made by village officers in accordance with the provisions of rule 64 of the rules under that Act published with the Financial Commissioner's Notification No. 142, dated the 9th November, 1909.

33. To remit the fees chargeable on copies of all records maintained under the provisions of Chapter IV of the Punjab Land Revenue Act, 1887 (XVII of 1887), when such copies are exhibited or recorded in any Court of Justice or are received or furnished by any public officer.

34. To remit the fees chargeable on applications for the grant of fishing licences prescribed by the rules made by the Government of the Punjab under section 3 of the Punjab Fisheries Act, 1914 (Punjab Act II of 1914).

I.—UNITED PROVINCES.

U. P. Government Notification No. 1232|VII—353, dated the 11th October, 1923 (Judicial Civil Department), and amended by subsequent orders.

69. Under section 35 of the Court-Fees Act, 1870 (VII of 1870), as amended by the Devolution Act, No. XXXVIII of 1920, and in supersession of all previous notifications under that section it is hereby notified that, in exercise of the power to reduce or remit in the whole or in any part of the territories under his administration, all or any of the fees mentioned in the First and Second Schedules to the said Act, the Governor in Council has been pleased in respect of the whole of the territories under his administration to make with effect from 1st November, 1923, the reductions and remissions hereinafter set forth, namely—

(1) to direct that the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper of value not exceeding Rs. 25, which has become spoiled or unfit for use, or is no longer required for use, and on applications for renewal of stamped paper of value not exceeding Rs. 25 which has become spoiled or unfit for use, shall be limited to two annas;

(2) to remit the fees chargeable on applications in writing relating exclusively to the purchase of salt which is the property of the Government;

(3) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or officer, without summoning the defendant, rejects it not for any substantial defect, but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated, together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should, in his opinion, be refunded;

(4) to direct that the fee chargeable on appeals from orders under section 47 of the Code of Civil Procedure, 1908 (Act V of 1908) shall be limited to the amounts chargeable under Article 11 of the Second Schedule;

(5) to direct that the fees chargeable under paragraph 2 of clause (*b*) of Article 1 of the Second Schedule, on applications for orders for the payment of deposits in cases in which the deposit does not exceed Rs. 25 in amount shall be limited to two annas:

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application;

(6) to remit the fees chargeable on applications for loans under the Agriculturists' Loans Act, 1884 (XII of 1884);

(7) to remit the fee chargeable on application made by a person to the Collector under sub-section (2) of section 42 of the Indian Stamp Act, 1889 (II of 1899), for the return to that person or to the Registration Officer who impounded it, of a document impounded and sent to the Collector by a Registration Officer;

(8) to remit the fees chargeable on the following documents, namely,—

(*a*) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1898 (V of 1898), or of a translation thereof, when the copy is given to an accused person;

(*b*) copy of the evidence of supplementary witnesses after commitment, when the copy is given under section 219 of the said Code to an accused person;

(*c*) copy or translation of a judgment in a case other than a summons case, and copy of the heads of the Judge's charge to the jury, when the copy or translation is given under section 371 of the said Code to an accused person;

(*d*) copy or translation of the judgment in a summons case, when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail;

(*e*) copy of an order of maintenance, when the copy is given under section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid;

(*f*) copy furnished to any person affected by a judgment or order passed by a Criminal Court of the Judge's charge to the jury, or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which, on its being applied for under section 548 of the said Code, the Judge or Magistrate for some special reasons to be recorded by him on the copy, thinks fit to furnish without such payment;

(*g*) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other

person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court;

(*h*) copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings;

(*i*) copies of judgments or depositions required by officers of the Police Department in the course of their duties.

(9) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office;

(10) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted except where otherwise expressly provided by this notification;

(11) to direct that no Court-fee shall be charged on an application for the repayment of a fine or of any portion of a fine, the refund of which has been ordered by competent authority;

(12) to remit the fees chargeable on applications for copies of documents detailed in clause 8, *supra;*

(13) to remit the fees chargeable on applications presented to officers of land revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed;

(14) to remit the fee chargeable on applications and petitions presented to a Collector, or any Revenue Officer having jurisdiction equal or subordinate to that of the Collector, for advice or assistance from the Agricultural Department of the Province;

(15) to remit as follows the fees leviable under Articles 11 and 12 of the First Schedule on the property of

(*i*) any person subject to the Naval Discipline Act (29 and 30 Vict., c. 109), the Army Act (44 and 45 Vict., c. 58), the Air Force Act (Constitution) Act (7 and 8 Geo. 5, c. 51) or the Indian Army Act, 1911 (VIII of 1911), who is killed or dies from wounds inflicted, accidents occurring or disease contracted while on active service or on service which is of a warlike nature or involves the same risk as active service, and (*ii*) any person being a Government servant, Civil or Military, who dies from wounds inflicted (*a*) while in actual performance of his official duties, or (*b*) in consequence of duties;

(*a*) where the amount or value of property in respect of which the grant of probate or letters of administration is made or which is specified in the certificate under Part X of the Indian Succession Act, 1925, does not exceed Rs. 50,000, the whole of the fees leviable in respect of that property; and

(*b*) where the said amount or value exceeds Rs. 50,000 the whole of the said fees in respect of the first Rs. 50,000;

(16) to remit the fees chargeable on applications presented to officers of land revenue for suspension or remission of loans under the Land Improvement Loans Act, 1883 (XII of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884);

(17) to remit the fees chargeable on copies of decrees of Civil Courts situate in the territories of His Highness the Gaekwar of Baroda forwarded to any Court in British India for execution in pursuance of the provisions of section 44 of the Civil Procedure Code, 1908 (Act V of 1908);

(18) to reduce to eight annas the fee chargeable on a copy of any number of entries in a settlement record relating to any one village in the Kumaun division;

(19) (*i*) to remit the fees payable on all documents filed, exhibited or recorded, in, or furnished by, the Court of the Special Judge under the Bundelkhand Encumbered Estates Act, 1903 (U. P. Act I of 1903);

(*ii*) to remit the fees payable on all documents connected with the proceedings in the Court of the Commissioner under the Act, except the memoranda of appeal and on applications for revision of any decision or order of the Special Judge under Chapter VI thereof;

(*iii*) to reduce to eight annas the fee payable on any appeal against a decision of the Special Judge under Chapter VI of the Act;

(20) to remit the fees chargeable on notices of claims under section 6, sub-section (*c*) of the Indian Forest Act, 1878 (VII of 1878) presented to Forest Settlement Officers in the district protected forests of the Kumaun division;

(21) to remit the fees payable on copies of decrees and applications for execution forwarded by Civil Courts to Collectors under rules 2 and 6, Board's Circular 25-II;

(22) to remit the fees chargeable under Articles 6, 7 and 9 for the First Schedule on copies furnished by Civil or Criminal Courts or Revenue Courts or officers for the private use of persons applying for them:

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer;

(23) (*a*) to remit all fees payable under Schedule II of the said Act upon applications for the grant or renewal of licences or duplicates under the Indian Arms Rules, 1924, in respect of which a fee is payable under those Rules, and

(*b*) to reduce to one anna all fees exceeding one anna payable under the said schedule upon other applications relating to licences or duplicates granted or renewed under the said rules:

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer;

(24) Applications made to a District Magistrate for revision of an order passed by a returning officer, under rule 26 of the rules made under section 172 of the United Provinces District Boards Act, 1922;

(25) to remit all fees payable upon applications relating to matters connected with the ascertainment of rights to land or of interests therein presented to a record officer or an assistant record officer in any district under survey and record operations in the United Provinces;

(26) to remit all fees payable upon—

(*i*) all petitions of appeal filed by Government servants against departmental orders of punishment; and

(*ii*) copies of orders against which Government servants appeal, and which they file with their petitions of appeal;

(27) to exempt from the payment of a stamp duty of one anna on all applications made under sections 19, 26 and 37 of the Indian Income-tax Act, 1918 (VII of 1918), to a Collector, or to any officer or person discharging all or any of the functions of a Collector under that Act.

NOTE.—Rules 1, 3, 4, 5, 8 (*g*), (*h*), (*i*), 9, 10, 11, 12, 15, 17, 21 and 26 are applicable to Oudh.

APPENDIX IV.

RULES RELATING TO PROCESS AND PROCESS FEES.

I.—ALLAHABAD HIGH COURT.

COURT-FEES AND PROCESS FEES.

1. At any District or Subordinate Court, where the District Judge considers it necessary, the central Nazir or Nazir may be charged with the duty of selling impressed paper to applicants for copies. The paper will be supplied from the treasury or sub-treasury in quantities of value not less than fifty rupees, in the first instance without payment in ready money, and afterwards upon payment for last supply received. The central Nazir may similarly be charged with the duty of selling Court-fee stamps of the value of one, four, and eight annas and one rupee, which will be supplied from treasuries or sub-treasuries in quantities of value not less than fifty rupees. No commission shall be allowed on the sale by a central Nazir or a Nazir of impressed paper or Court-fee stamps.

No record of sales of impressed paper need be kept; but a day-book showing daily receipts and sales of Court-fee stamps must be kept in the form prescribed by rule 43.

2. The fees exhibited in the following table shall be charged for serving and executing the several processes against which they are respectively ranged:—

Table of fees.

Part I.—In the High Court, Appellate Jurisdiction:—

Article 1.—Notice of appeal or other notice to respondents, when the respondents are not more than four in number, *one fee* .. Rs 3 0 0

When such respondents are more than four in number, then the fee abovementioned for the first four, and an additional fee of eight annas for every such person in excess of four: provided that the aggregate amount of the fees levied under this article shall not exceed fifteen rupees.

Article 2.—Summons to witnesses when the witnesses are not more than four in number, *one fee* .. .. Rs 3 0 0

When such witnesses are more than four in number, then the fee abovementioned for the first four, and an additional fee of eight annas for every such witness in excess of four.

Article 3.—Every warrant of arrest in respect of each person to be arrested .. .. Rs 5 0 0

Article 4.—Notice, proclamation, injunction or other order not specified in any preceding article of this part when the copies to be served or posted are not more than four in number, *one fee* .. .. Rs 3 0 0

When such copies are more than four in number, then the fee abovementioned for the first four, and an additional fee of eight annas for every such copy in excess of four: provided that the aggregate amount of the fees levied under this article shall not exceed fifteen rupees.

Part II.—[1] In the Courts of District Judges, Subordinate Judges and Judges of Courts of Small Causes when exercising the powers of a Subordinate Judge conferred under section 31 of Act No. IX of 1887:—

Article 1.—Summons to defendants, notice of appeal or other notice to respondents when the defendants or respondents are not more than four in number, *one fee* .. .. Rs. 2 8 0

When such defendants or respondents are more than four in number, then the fee abovementioned for the first four, and an additional fee of ten annas for every such person in excess of four: provided that the aggregate amount of fees levied under this article shall not exceed twelve rupees eight annas.

Article 2.—Summons to witnesses, when the witnesses are not more than four in number, *one fee* .. .. Rs. 2 8 0

When such witnesses are more than four in number, then the fee abovementioned for the first four, and an additional fee of ten annas for every such witness in excess of four.

Article 3.—Every order of attachment .. .. Rs. 1 4 0

Article 4.—In respect of the services of the officer making an attachment in the manner prescribed in Order 21, Rules 43, 44, 51 or 54 and section 46 of Act No. V of 1908 when property is to be attached in one town or village only, *one fee* .. .. Rs. 9 0 0

When property is to be attached in more than one town or village, then the fee abovementioned for the first town or village specified in the order of attachment, and an additional fee of two rupees for every other town or village: provided that the aggregate amount of the fees levied under this article shall not exceed fifteen rupees.

Article 5.—Every warrant of arrest in respect of each person to be arrested .. .. Rs. 3 12 0

Article 6[2].—In respect of the services of each peon in whose custody a judgment-debtor is left under Order 21, Rule 40 (3) of Act No. V of 1908, *per diem* .. Re. 0 6 0

Article 7[3].—Every order for the sale of property—

(*a*) in respect of the order of sale .. .. Rs. 1 4 0

(*b*) by way of poundage on the full amount of the purchase-money—

if the sale be effected through a broker under Order 21, Rule 76 of Act No. V of 1908	The commission payable to the broker and in addition a sum equal to one-quarter of such commission
if the sale be conducted by an officer of the Court or by any other person (not being a Collector or a broker) appointed by the Court	6¼ p. c.

Article 8.—In respect of the services of the officer making delivery of possession of property under Order 21, Rules 31, 35, 36, 95, 96, 98 or 101 of Act No. V of 1908 when property is to be delivered in one town or village only, *one fee* .. .. Rs. 9 0 0

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[1] NOTE.—When a District Judge, Subordinate Judge or Judge of a Court of Small Causes invested with the powers of a Subordinate Judge is exercising original jurisdiction in any suit in which the amount and value of the subject-matter does not exceed one thousand rupees, the fees chargeable will be those prescribed in Part III or Part IV as the case may be.

[2] NOTE.—Fees will be paid under this article in advance for such period as the Court may from time to time direct.

[3] NOTE.—The portion (*a*) of this fee must be paid when the process is obtained, and the poundage (*b*) at the time and in the manner prescribed in Rules 11, 15 and 16.

When property is to be delivered in more than one town or village, then the fees abovementioned for the first town or village specified in the warrant of delivery, and an additional fee of two rupees for every other town or village: provided that the aggregate amount of the fees levied under this article shall not exceed fifteen rupees.

Article 9.—Notice, proclamation, injunction or other order not specified in any preceding article of this Part, when the copies to be served or posted are not more than four in number, *one fee* .. Rs. 2 8 0

When such copies are more than four in number, then the fee abovementioned for the first four and an additional fee of ten annas for every such copy in excess of four: provided that the aggregate amount of the fees levied under this article shall not exceed twelve rupees eight annas.

Article 10[1].—If the service of a process other than a warrant for the arrest of the person, be declared "emergent" as described in Chapter III, Rule 16 .. Rs. 1 4 0

Part III.—(Except in suits specified in Part IV.)

In the Courts of Munsifs and in Courts of Small Causes—

Article 1.—Summons to defendants, when the defendants are not more than four in number, *one fee* .. .. Rs. 1 4 0

When the defendants are not more than four in number, then the fee abovementioned for the first four and an additional fee of five annas for every such defendant in excess of four: provided that the aggregate amount of the fees levied under this article shall not exceed six rupees four annas.

Article 2.—Summons to witnesses, when the witnesses are not more than four in number, *one fee* .. .. Rs. 1 4 0

When the witnesses are more than four in number, then the fee abovementioned for the first four and an additional fee of five annas for every such witness in excess of four.

Article 3.—Every order of attachment .. .. Re. 1 0 0

Article 4.—In respect of the services of the officer making an attachment in the manner prescribed in Order 21, Rules 43, 44, 51 and 54 and section 46 of Act No. V of 1908 when the property is to be attached in one town or village only, *one fee* .. .. Rs. 4 0 0

When property is to be attached in more than one town or village, then the fee abovementioned for the first town or village specified in the order of attachment, and an additional fee of one rupee for every other town or village: provided that the aggregate amount of fees levied under this article shall not exceed seven rupees.

Article 5.—Every warrant of arrest in respect of each person to be arrested .. .. Rs. 2 8 0

Article 6[2].—Every order for the sale of property—

(*a*) in respect of the order of sale .. .. Re. 1 0 0

(*b*) by way of poundage on the full amount of the purchase money—

if the sale be effected through a broker under Order 21, Rule 76 of Act No. V of 1908.	The commission payable to the broker and in addition a sum equal to one-quarter of such commission

[1] NOTE.—This fee will be payable in addition to the ordinary fees specified in Articles 1, 2 or 9 of this part.

[2] NOTE.—The portion (*a*) of this fee must be paid when the process is obtained and the poundage (*b*) at the time and in the manner prescribed in Rules 11, 15 or 16.

if the sale be conducted by an officer of the Court or by any other person (not being a Collector or a broker) appointed by the Court .. 6¼ p.c.

Article 7.—In respect of the services of the officer making delivery of possession of property under Order 21, Rules 31, 35, 36, 95, 96, 98 or 101 of Act No. V of 1908, when property is to be delivered in one town or village only, *one fee* .. Rs. 4 0 0

When property is to be delivered in more than one town or village, then the fee abovementioned for the first town or village specified in the warrant of delivery, and an additional fee of one rupee for every other town or village: provided that the aggregate amount of the fees levied under this article shall not exceed seven rupees.

Article 8.—Notice, proclamation, injunction or other order not specified in any preceding article of this part, when the copies to be served or posted are not more than four in number, *one fee* .. .. Rs. 1 4 0

When such copies are more than four in number, then the fee abovementioned for the first four and an additional fee of five annas for every such copy in excess of four: provided that the aggregate amount of the fees levied under this article shall not exceed six rupees eight annas.

Article 9[1].—If the service of a process, other than a warrant for the arrest of the person be declared "emergent" as described in Chapter III, rule 16 .. .. Re. 1 0 0

Part IV.—In the Courts of Munsifs and in Courts of Small Causes in suits in which the amount or value of the subject-matter in dispute does not exceed Rs. 50.

Article 1.—Summons to defendants, when the defendants are not more than two in number, *one fee* .. .. Re. 0 10 0

When the defendants are more than two in number, then the fee abovementioned for the first two, and an additional fee of three annas for every such defendant in excess of two: provided that the aggregate amount of the fees levied under this article shall not exceed four rupees.

Article 2.—Summons to witness, in respect of each witness. Re. 0 5 0

Article 3.—Every order of attachment .. .. Re. 0 10 0

Article 4.—In respect of the services of the officer making an attachment in the manner prescribed in Order 21, Rules 43, 44, 51 and 54 and section 46 of Act No. V of 1908, when property is to be attached in one town or village only, *one fee* .. .. Rs 2 0 0

When property is to be attached in more than one town or village, then the fee abovementioned for the first town or village specified in the order of attachment, and an additional fee of nine annas for every other town or village: provided that the aggregate amount of the fees levied under this article shall not exceed three rupees.

Article 5.—Every warrant of arrest in respect of each person to be arrested .. .. Rs 1 4 0

Article 6[2].—Every order for the sale of property—

(*a*) in respect of the order of sale .. ..Re. 0 10 0

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[1] NOTE.—This will be payable in addition to the ordinary fee specified in Article 2 or 8 of this part.

[2] NOTE.—The portion (*a*) of this fee must be paid when the process is obtained and the poundage (*b*) at the time and in the manner prescribed in Rules 11, 15 or 16.

(*b*) by way of poundage on the full amount of the purchase money—

if the sale be effected through a broker under Order 21, Rule 76 of Act No. V of 1908. } The commission payable to the broker and in addition a sum equal to one-quarter of such commission

if the sale be conducted by an officer of the Court or by any other person (not being a Collector or a broker) appointed by the Court .. 6¼ p.c.

Article 7.—In respect of the services of the officer making delivery of possession of property under Order 21, Rules 31, 35, 36, 95, 96, 98 or 101 of Act No. V of 1908, when the property is to be delivered in one town or village only, *one fee* .. .. Rs. 2 0 0

When property is to be delivered in more than one town or village, then the fee abovementioned for the first town or village specified in the warrant of delivery and an additional fee of eight annas for every other town or village: provided that the aggregate amount of fees levied under this article shall not exceed three rupees.

Article 8.—Notice, proclamation, injunction or other order not specified in any preceding article of this part, when the copies to be served or posted are not more than two in number, *one fee* .. .. Re. 0 10 0

When such copies are more than two in number, then the fee abovementioned for the first two and an additional fee of three annas for every such copy in excess of two: provided that the aggregate amount of the fees levied under this article shall not exceed four rupees.

Article 9[1].—If the service of a process, other than a warrant for the arrest of the person, be declared "emergent" as described in Chapter III, Rule 16 .. .. Re. 0 10 0

3. Notwithstanding rule 2, fees for processes in execution of a decree or order for money shall be charged, irrespective of the grade of the Court issuing such processes and of the value of the original suit, according to the amount, including interest, if any due, upon the decree or order; that is to say, if such amount exceed Rs. 1,000, fees shall be charged under Part II; if it be less than Rs. 1,000 and more than Rs. 50, they shall be charged under Part III; and if it does not exceed Rs. 50, they should be charged under Part IV.

4. Notwithstanding Rule 2, no fee shall be chargeable for serving or executing—

(1) any process which may be issued by any Court of its own motion, solely for the purpose of taking cognizance of and punishing any act done or words spoken in contempt of its authority;

(2) any process issued a second time in consequence of an adjournment made otherwise than at the instance of a party or an intervenor;

(3) any copy of a warrant, order or certificate posted under Order 21, Rules 36, 54 or 96, of Act No. V of 1908, when the fee chargeable under Article 4 or Article 8, Part II, or under Article 4 or Article 7, Parts III and IV has been paid;

(4) any copy of a summons, notice, order, proclamation or other process, posted in a Court-house or in the office of a Collector;

(5) any notice issued by a District Court under Schedule III, paragraph 5 of Act No. V of 1908;

(6) any order intimating withdrawal of attachment or postponement of sale;

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[1] NOTE.—This fee will be payable in addition to the ordinary fee specified in Articles 1, 2 or 8 of this part.

(7) any order intimating to a sale officer that permission has been given to a decree-holder to bid for or purchase property under Order 21, Rule 72 of Act No. V of 1908;

(8) any copy of a notice of an application under Act No. VIII of 1890 sent to a Collector under Chapter XX, Rule 19;

(9) any order directing an officer in charge of a jail to detain or to release a person committed to his custody.

5. No process which comes within the operation of rule 2 shall be drawn up for service or execution until the fee chargeable under that rule has been paid. The fee shall be paid in Court-fee stamps, which shall be affixed either on the application by which the Court is moved to issue the process, or, if no such application be filed, on the order by which the Court directs the issue or service of the process. If such an application be filed, it shall bear the requisite stamps for the fee in addition to such stamps, if any, as are needed for its own validity.

II.—COURT-FEE PAYABLE UNDER THE BENGAL TENANCY ACT VIII OF 1885.

Nature of the document.	The stage at or the officer before whom filed or used.	Authority.
1. Application or petition.	Revenue officer .. / Director of Land Records.	Sch. II, Art. 1 (*b*). / Sch. II, Art. 1 (*c*).
2. Applications and petitions of any objection to any entry proposed to be made in any draft record.	Any officer before draft publication under sec 103A, Bengal Tenancy Act.	Exemption by Rule 34 of No. 1872 J., dated 23-5-1921, Government of Bengal.
Applications and petitions of any objection to any entry proposed to be made in any draft record.	Under sec. 104E Bengal Tenancy Act, before any officer.	Exemption under section 19 (IX) of the Court-Fees Act.
3. Application for settlement of rent under section 105, B. T. Act.	Any Settlement Officer or Assistant S. O.	12 as. for each tenant making or joining or joined in the application. No. 6954 L. R., dated 21-7-1922, Bengal Govt. Calcutta Gazette, 26-7-22, Pt. I, p. 1451.
4. Application raising issue under sec. 105-A during hearing.	Any Settlement Officer or Assistant S. O. under sec. 105A.	In addition to the above fee, a stamp to the amount of an *ad valorem* fee chargeable under Art. I, Sch. I subject to a maximum of twenty (Rs. 20) rupees. No. 6954 L. R., dated 21-7-1922.
5. Plaint in suits under sec. 106, B. T. Act.	Before Settlement Officer or Assistant S. O.	The fee is reduced to the amount of *ad valorem* fee chargeable under

Nature of the document.	The stage at or the officer before whom filed or used.	Authority.
		Article 1, Sch. I of the Court-Fees Act, in cases where the amount of such fee would be less than Rs. 20, clause 38 of No. 1872 J., dated 23-5-21 as amended by No. 3789 L R., dated 3rd April 1922, Calcutta Gazette, Pt. I, p. 689.
6. A petition or application in a proceeding under secs 105, 105A, 108 and 108A of B. T. Act.	Settlement Officer or Assistant S. O.	Sch. II, Art. 1 (*b*). *See* 32 C.W.N. 1136 (1928) *Gopal* v. *Guru Charan.*
7. A petition or application in a suit under sec. 106, B.T. Act.	Settlement Officer or Assistant Settlement Officer or Civil Court.	Sch. II, Art. 1 (*a*). If the value is Rs. 50 or upwards, Sch. II, Art. 1(*b*).
8. Application for commutation under sec. 40, B. T. Act.	Settlement Officer or Assistant Settlement Officer.	Sch. II, Art. 1 (*b*).
9. A suit under sec. 111A, B. T. Act.	Civil Court ..	If simply declaratory, Sch. II, Art. 17 (*iii*), but if, with consequential relief, Sec. 7 (IV) (*c*), Court-Fees Act.
10. Appeals under sec. 104G.	Revenue Court ..	Sch. II, Art. 1 (*b*).
	Commissioner or Director of Land Records, Bengal.	Sch. II, Art. 1 (*c*).
11. Appeals under section 109A against decisions of a Revenue Officer under sections 105 to 108A both inclusive.	Special Judge ..	*Ad valorem* or Rs. 20 as the case may be.
12. Application for copies.	Revenue Officer, S. O. and Asst. S. O.	Sch. II, Art. 1 (*a*).
13. Certification of copies of final records otherwise than Govt. Rule 62.	Revenue officer ..	Clause (39) of No. 1872 J., dated 23-5-1921, Bengal Govt. Calcutta Gazette, Pt. I, pp. 866, 877.

III.—BOMBAY HIGH COURT.

Rules under S. 20 (ii).

Fees chargeable for serving processes in case of certain offences.

[1] The fees chargeable for serving and executing processes issued by the Court of any Magistrate in the case of offences, other than offences for which Police Officers may arrest without a warrant, shall be those shown in the appended Table.

Table.

1. In cases falling within Chapters 19, 20 and 21 of the Indian Penal Code:—

	Rs.	A.	P.
(*i*) For every summons or notice ..	0	4	0
(*ii*) For every warrant of arrest ..	1	0	0
(*iii*) For every proclamation for absconding party or witness (Criminal Procedure Code, Ss. 87 and 88) ..	1	0	0
(*iv*) For every warrant of attachment ..	1	0	0

2. In all other cases the fee chargeable for every process shall be one-fourth of the fee shown in the above table.

Proviso.—No fee shall be levied on any process issued upon the complaint of any Public Officer asking as such Public Officer.

The Court may remit the process-fees, in whole or in part, in cases other than those falling under Chapters 19, 20 and 21 of the Indian Penal Code, whenever the Court is satisfied that the complainant or the accused has not the means of paying them.

Rules under Ss. 20 and 22 of the Court-Fees Act.

The following rules framed by the Honourable the Chief Justice and Judges of the High Court under sections 20 and 22 of the Court-Fees Act, VII of 1870, confirmed by the Government of Bombay and sanctioned by the Governor-General of India in Council are published for general information:—

I.—The fees at present levied for serving and executing processes issued by the High Court in its appellate jurisdiction shall continue to be levied.

II.—The fees chargeable by all other Civil Courts shall be those Civil Court's fees shown in the appended table.

III.—*Remuneration of bailiffs, peons and other persons employed by any Civil Court, other than the High Court, in the service and execution of processes.*

[Omitted.]

Rules IV to VIII relating to the strength of the process staff and the standard out-turn work is omitted as this will be found in the Rules and Orders of the High Court.

IX.—The following table contains the prescribed fees chargeable in Civil Courts in respect of Processes and Proclamations:—

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[1] Notification, dated 16th February, 1875, *Bombay Government Gazette*, Part I, p. 140.

Table.

Fees chargeable in Civil Courts in respect of processes and proclamations.

NAME OF PROCESS.	Amount leviable in		
	Any Court of Small Causes and any Subordinate Judge's Court in a suit in which no second appeallies as provided in Section 586 of the Code of Civil Procedure.	District Court and Subordinate Judge's Court in cases not provided in the preceding column.	Mamlatdar's Court.
	Rs. A. P.	Rs. AS. P.	Rs. A. P.
I—For each summons or notice—			
(*a*) to a single defendant, respondent or witness ..	0 4 0	1 0 0	0 3 0
(*b*) to every additional defendant, respondent or witness, residing in the same village, if the process be applied for at the same time ..	0 2 0	0 8 0	0 2 0
II.—For every warrant—			
(*a*) of arrest in respect of every person to be arrested ..	0 8 0	2 0 0	..
(*b*) of attachment in such warrant ..			
(*c*) of sale in respect of every such warrant ..			
III.—For proclamation, injunction or order and every process not otherwise provided for ..	0 8 0	2 0 0	..

Note I.—With the sanction of the Court any party may pay the cost of proceeding by railway or any public conveyance where such is available, and in such case the process-server shall be bound to proceed by such railway or public conveyance.

Note II.—For process applied for and ordered to be executed as emergent the fee will be the ordinary and half as much again.

Note III.—*Fee how to be charged.*—Where one individual is to be served in more than one capacity, *e.g.*, personally and also as guardian of a minor or minors, only one fee is to be levied.

Note IV.—*Re-issue of processes unserved.*—When a process issued by a Civil Court other than Mamlatdar's Court is returned unserved for service, a half fee only shall be charged on the occasion of each re-issue.

This rule applies whatever may be the reason which prevented service (*e.g.*, whether the failure to serve was due to the fault of the party on whose behalf it was issued or not), and whether the identical paper is re-issued or a fresh paper.

Note V.—*Issue of second process on service being set aside, etc.*—When the service is set aside in an inquiry under section 82, Civil Procedure Code,[1] or when witnesses, etc., have to be summoned a second time in consequence of the Court not sitting or not taking up, or not completing the hearing of the case on the day on which they were first summoned, no further fee is to be levied upon re-issue.

Note VI.—If a warrant has already been issued to arrest a judgment-debtor who has failed to pay the decretal amount and who has been ordered to be imprisoned in a civil jail, and such warrant of arrest is in force, no further fee is leviable on the order of committal to jail.

Note VII.—*Process issued by Court without fee.*—No fee is to be charged for any process issued by a Court of its own motion.

Note VIII.—*Exemption of proclamations.*—No process-fees shall be charged on proclamations under section 10 of Regulation VIII of 1872.

Note IX.—*Fees for processes, etc., in suits under Act XVII of* 1879.—The fees levied for all processes in suits to which Chapter II of the Dekkhan Agriculturists' Relief Act (XVII of 1879) applies, except suits of description mentioned in section 3, clauses (*w*) and (*x*), to which an agriculturist is not a party, shall be one-half the fees which would be leviable in similar suits, to which the said Act does not apply.

Note X.—No fees shall be levied for the service of any notice or other process issued in proceedings taken under Chapter IV of the Dekkhan Agriculturists' Relief Act, XVII of 1879.

Note XI.—Nothing contained in these rules (or in any rules heretofore made by the High Court under section 20 of the Court-Fees Act VII of 1870) shall apply to process issued by a Village Munsif under Chapter V of the said Act (XVII of 1879).

Note XII.—*Salary of bailiffs, etc., required from party.*—

(*a*) When the services of one or more bailiffs or peons are required for a longer period than three days, the party on whose application the process was issued shall, in addition to the fee leviable under the above rules, be required to pay the whole salary of such bailiffs or peons for the whole period in excess of three days.

(*b*) The time occupied in going and returning from the place at which service of process is to be made shall not be reckoned as a portion of the above period.

(*c*) If the amount payable on account of salary under the above rule shall involve a fractional part of an anna, such part shall be remitted.

Note XIII.—For the purposes of these rules the Courts of the Agents or Sardars shall be treated as District Courts and all other Civil Courts not specially mentioned, as Subordinate Judge's Courts.

118. *No Court-fee leviable on certificates of decree-holders under section* 258, *C. P. Code.*—No Court-fee is leviable upon a certificate of a decree-holder under section 258 of the Civil Procedure Code,[2] although such certificate declares that the judgment-creditor has received a smaller sum or a thing of less value in discharge of a larger sum due under the decree, or in complete discharge of the decree.

119. Any copy which on its first presentation has been duly stamped, and of which the stamp has been cancelled, may, if otherwise admissible, be used in the same or any other proceeding without a fresh stamp.

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[1] *See* now Act V of 1908, First Sch., O. 5, R. 19.
[2] *See* now Act V of 1908, First Schedule, O. 21, R. 2.

120. *Court-fees when to be paid and how.*—Before any process is issued in any Court, the proper officer of the Court should calculate the amount to be paid as Court-fees, and should give information of such amount to the person by whom the fees are payable. Such fees should be paid before the end of the fourth day after the day on which such information is given. The Court may, for sufficient reason, extend the time for payment.

The stamps received for Court-fees should be affixed to the application upon which the process is to be issued.

Process to be prepared after receipt of fees.—After the fees have been received but not before, the necessary summons, notice, warrant or other process should be prepared.

Levy of fees to be endorsed on process issued beyond jurisdiction.—When the process is to be issued beyond the jurisdiction of the Court, a note should be made on the process to the effect that the proper fee has been levied.

121. *Process issued by Courts in British territory to be served free of charge in Bombay Presidency.*—A process issued by any Court in British territory should be served free of charge by any Court (including the Court of Small Causes at Bombay) in the Bombay Presidency, if it be certified in the Process that the proper fee has been levied under the rules in force in the territory in which the Court issuing the process is situated. —*Bombay Government Gazette,* 1898, Pt. I, p. 354.

122. *Processes to Settlements how to be addressed. Fee and postage to be remitted.*—Processes for service in the Straits Settlements should be forwarded by the Registrar of the Supreme Court at Singapore, Penang or Malacca, as the case may be, and should be accompanied by a sum sufficient to cover the fees for service and postage, the remittance being by a Post Office Money Order.

Sufficient time, not less than three months from the date of posting, should be allowed by Courts for the service of summons and other documents on persons resident in the Straits Settlements and for the attendance of such persons before them.—*Bombay Government Gazette,* 1900, Pt. I, p. 2365.

123. *Particulars to be given in summonses to His Highness the Nizam's territories.*—In summonses sent to the Resident at Hyderabad for service on persons residing in the territories of His Highness the Nizam the name of each person's place of residence, that is, the district, village and moholla (locality), should be given in full in the summons.—*Bombay Government Gazette,* Pt. I, p. 1161.

In the case of summonses to be served in the City of Hyderabad, a period of five weeks should be fixed for return, and in the case of summonses to be served in the districts, a period of two months.—*Bombay Government Gazette,* 1890, Pt. I, p. 125.

124. *Process to Burma.*—Processes sent for service at any place where the language is different from that of the Court issuing them, should be accompanied by translations in the language of such place or English. The language of the Presidency Small Cause Court, Bombay, is English.—*Bombay Government Gazette,* Notification No. 5149 of 1888 (*Bombay Government Gazette,* 1888, Pt. I, p. 763).

125. *Foreign Processes.*—Foreign processes issued by British Courts under the provisions of Government of India Notification No. 1890—1, dated the 20th June, 1895, are not compulsory in British India.—*Bombay Government Gazette,* 1901, Pt. I, p. 186.

126. *Processes from the H. E. H. the Nizam's Courts.*—Processes issued by the District Civil Courts in His Highness the Nizam's Dominions direct

to Civil Courts in British India for service in the Districts within the Presidency proper, or to the Court of Small Causes at Bombay, for service within the limits of the town of Bombay, shall be duly served by the Civil Courts concerned or the Court of Small Causes at Bombay, as the case may be, as if such processes had been originally issued by those Courts and returned direct to the Courts issuing them.

127. *Processes to Nizam's Courts.*—Processes issued by any Civil Courts in British territory for service on persons residing in His Highness the Nizam's dominions shall be sent direct to the District Civil Courts[1] in those dominions having jurisdiction at the places where such persons reside, provided that processes for service in the City of Hyderabad and the suburbs shall be sent to the City Civil Court there.

Processes for service on persons residing in Paigah and Jagir ilakas should be forwarded to District Court of His Highness' Government in the jurisdiction of which the Paigah and Jagir is situated and not direct to the Paigah or Jagir authorities. In such cases it should be ascertained from the parties concerned whether the person to be summoned resides in a Jagir or Paigah village, and, if so, the name of the District Court within the jurisdiction of which that village is situated.—H.C. Sup. Civ. Cir. No. 15; *Bombay Government Gazette,* 1904, Pt. I, p. 1742.

128. Where the processes for service in His Highness' dominions are issued for the appearance as a witness of any person residing there, the amount of batta and travelling allowances to which the witness is entitled shall be remitted, with the process, by Money Order.—*Bombay Government Gazette,* 1899, Pt. I, p. 1161.

129. Processes sent by Courts for service from British India to His Highness the Nizam's dominions and *vice versa* will, after service, be conveyed back to the Courts of issue, whether British or Hyderabad, at single rates of postage.—*Bombay Government Gazette,* 1901, Pt. I, p. 1432.

It is notified that general orders have been circulated by the Director-General of the Post Office of India that duly franked official correspondence on the service of His Highness the Nizam will be delivered free.—*Bombay Government Gazette,* 1901, Pt. I, p. 1141.

130. Courts in British territory should send direct to the Courts of Districts concerned all summonses or commissions intended for service or execution within the limits of the territories of Mysore, and should fix such dates for their return, as will admit of their service or execution within the appointed time.—*Bombay Government Gazette,* 1900, Pt. I, p. 2488.

The Mysore Darbar.—Judicial notices, summonses and like judicial papers and notices in Revenue Appeals before the Mysore Darbar will be transmitted to the British authorities in India direct and not through the Resident.—H. C. Sup. Civ. Cir. No. 33; *Bombay Government Gazette,* Pt. I, p. 403.

131. [2] *Process of certain Courts in Native States to be served free of charge by Courts in Bombay Presidency.*—Processes issued by the Courts in Berar, Mysore, or in the territories of His Highness the Nizam, or in Gwalior, Dewas State (Senior branch), Dewas State (Junior branch), Rewa, Jaora, Rutlam, Indore, Dhar, Jhabua, Brawani, Ali Rajpur, Bhopal, Orchha, Datia, Panna, Ajaigarh, Charkhari, Bijawar, Baoni, Chhatardur, Gharauli,

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[1] For the designation of the Judges of District Courts and the names of the Districts in His Highness' dominions, see *Bombay Government Gazette,* 1889, Pt. I, p. 1161.

[2] Printed as amended, *Bombay Government Gazette,* 1889, Pt. I, p. 1077 and *Bombay Government Gazette,* 1897, Pt. I, p. 466.

"Kurwai and Narsingarh"[1], or by any of the Courts mentioned in the Government of India's Notification No. 4052-1-A., dated the 11th September, 1902, republished at pp. 1639 to 1642 of the *Bombay Government Gazette* for 1902, Part I, or in subsequent notifications to which the provisions of section 650-A of the Code of Civil Procedure[2] have been applied, shall be served free of charge by the Courts in the Bombay Presidency.

Note.—For the Table of the Courts to which the Governor-General in Council has declared the provisions of S. 650-A to apply.

132. Legal process, Civil, Criminal and Revenue, of the Courts of the Bombay Presidency will be executed free of the process fees or postage fees by the Courts of the Indore State.—B.G. Resolution, J.D., No. 4415, dated 19th July, 1902.

Process intended for His Highness the Maharaja Holkar's subjects should be addressed to the Resident of Indore. Those intended for subjects of the following States and Thakurates—Dewas senior and junior branches, Bagli, Pathari, Karaudia, Kheri Rajpur, Kaitha, Uni and Arnia, should be addressed to the First Assistant to the Agent to the Governor-General in Central India at Indore.—B.J.R., J.D., No. 8011, 18th December, 1902.

Summonses and processes for service in the Indore State should be sent direct to the District Court of the District where the addressee resides and in the case of Indore City, to the City Munsif. Summonses for the Parganas of Alampur, Pitlawad and Chikalda (with headquarters of the same name) should be sent to the Pargana Munsifs. The names of the districts in the State and their headquarters are as follows:—[3]

1.	Indore	.. Indore.
2.	Nimar (which includes both Khargone *alias* Srikar Bijagarh and Mandleshwar)	.. Mandleshwar.
3.	Rampura Bhanpura	.. Garot.
4.	Nimawar	.. Kannod.
5.	Mahidpur	.. Mahidpur.

When the name of the district where the summonsee resides is not known to the Court of issue, the summons may be forwarded to the "Indore Residency Vakil, Indore" for transmission to its destination. Criminal summonses and miscellaneous process for the recovery of money should be forwarded as heretobefore to the Resident. Processes issued by the Courts in Indore will be sent by the Courts direct and not through the Resident. The execution of a decree of Civil Court in British India can only be obtained in the Indore territory by the decree-holder suing upon it in the Indore Courts.—B.G. Letter (J.D.), No. 997, 20th February, 1906; *Bombay Government Gazette,* 1906, Pt. I, p. 403; H. C. Sup. Civ. Cir No. 32.

Process intended for the subjects of the following States and Thakurates should be forwarded to the address of the Political Officers in whose respective charges they are shown below:—

States and Thakurates.	Address of the Officer holding the Political charge.
1. Karandih, Arnia and Kheri Rajpur.	The Resident at Gwalior, Post Office, Gwalior Residency.
2. Kaitha ..	The Resident at Indore, Indore.
3. Dewas (Senior and Junior Branches), Bagli Pathari and Uni.	The Political Agent in Malway; Nimuch.

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[1] The words quoted have been inserted by B.G.R. (P.D.), No. 1016, 9th February, 1904; H. C. Sup. Civ. Cir. No. 6.

[2] *See* now S. 29 of Act V of 1908.

[3] The names of Districts and Headquarters have been substituted by H. C. Sup. Civ. Cir. No. 66 (*B. G. G.*, 1908, Pt. I, p. 1693) for those originally mentioned in Cir. No. 32.

—G.R. (J.D.)¦ No. 427, 21st January, 1909; *B. G. G.*, 1909, Pt. I, p. 225; H.C. Sup. Civ. Cir. No. 75; cancelling G.R. (J.D.), No. 8011, 8th December, 1902; *B. G. G.*, 1906, Pt. I, p. 403; H. C. Sup. Civ. Cir. No. 32, last para.

133. The Baroda Courts will serve all summonses issued by Civil Courts in British territory on the understanding that the Darbar will not be asked to enforce attendance. British Courts should serve Civil summonses issued by Baroda Courts, on similar terms.—*B. G. G.*, 1901, Pt. I, p. 186.

133-A. Summonses issued by all British Indian Courts and all Courts established or continued by the authority of the Governor-General in Council in the territories of any Foreign Prince or State, if sent to the Court of the Administrator, Sachin State, or that of the Diwan while the State is under British Administration, will be served by that Court as if the summons had been issued by itself, and after being so served will be returned with an endorsement of such service under the hand of the Judge of the Court.—Bom. G. R. (P.D.) No. 6334, 22nd September, 1920; H. C. Sup. Civ. Cir. No. 1.

134. The provisions of section 91 of the Civil Procedure Code (now Sch. I, O. 5, R. 30) allowing the substitution of a letter for a summons are to be applied in the case of all Covenanted and Commissioned Officers, Justices of Peace, First Class Subordinate Judges, First Class Magistrates of rank not below that of Deputy Collector, First and First Class Sardars and other gentlemen of equal or superior rank.

135. Care should be taken to address Ruling Chiefs and gentlemen of rank in the appropriate style, which in any particular case when necessity arises, may be ascertained from the Political Agent or the Political Department of the Secretariat, on proper occasions titles may be used.

136. When a village officer is summoned to give evidence, the summons should be served direct on such officer and a duplicate of it sent to the Mamlatdar, under whom he may be serving, for information; time being allowed, if possible, for making official arrangement for performing the duties at the village of the officer summoned.

137. A Civil Court to which summons for other process has been sent for service should make a return within the time fixed for the hearing of the cause, stating whether service has been effected or not, and if not, the reason for the non-service.

138. If a Court to which a summons has been sent for service be satisfied that the defendant is intentionally avoiding service, such Court shall itself direct substituted service to be effected in such manner as it thinks fit under the provisions of the Code of Civil Procedure without further reference to the Court issuing the summons.

139. In cases under First Schedule, O. 5, Rr. 16 and 17, Civil Procedure Code (Act V of 1908), the officer who serves the summons or notice on a defendant or respondent should immediately on his return make an affidavit before the proper officer as to the service of the summons or notice for use in case it becomes necessary under O. 9, R. 6 to prove that the summons or notice was duly served and in case the Court considers under O. 19, R. 1 of the Code, that there is sufficient reason for ordering the fact of service to be proved by affidavit.

140. No bailiff charged with the service of a process is entitled to call upon the party interested in the service to point out the person served.

It is the duty of the bailiff to use his best efforts to effect the service, and it is only when he fails, in spite of such efforts, that the Court may order the party to render help to him.

In cases where the serving officer does not know the individual on whom the process is to be served but such individual is pointed out to him, there should be a verification of the endorsement on the process by the bailiff and also by the person who points out the individual served.—H.C. Sup. Civ. Cir. No. 56; *Bom. G. G.*, 1908, Pt. I, p. 619.

IV.—CALCUTTA HIGH COURT.

RULES UNDER THE COURT-FEES ACT, RELATING TO FEES PAYABLE UNDER THAT ACT, AS FRAMED BY THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

Process Fees.

PART I.

Table of Fees in the High Court, Appellate Jurisdiction.

Article 1.—In every case in which personal or substituted service of any process on parties to the cause is required—

when not more than four persons are to be served with the same document, *one fee* .. .. Rs. 3 0 0

when such persons are more than four in number, then the fee above-mentioned and an additional fee of 8 annas for every such person in excess of four .. .. Re. 0 8 0

Provided that, in the last-mentioned case, where such persons reside in the same or immediately adjacent villages, the additional fee may be such sum, not exceeding the amount of fee prescribed, as the High Court may, in the particular case, determine.

Provided, also, that, in analogous cases, where the appellant is the same, but the respondents are different, but reside in the same or immediately adjacent villages, the same rule shall apply.

Article 2.—In every case in which personal or substituted service of any process on any persons who are not parties is required—

when the number of such persons is not more than four, *one fee* .. .. Rs. 3 0 0

when there are more than four such persons, then the fee above-mentioned for the first four, and an additional fee of eight annas for every one in excess of that number .. .. Re. 0 8 0

Article 3.—For the execution of a warrant for arrest of the person .. .. Rs. 3 0 0

Article 4.—For service or execution of any process issued by the Court, not specified in any preceding article of this Part ..Rs. 3 0 0

PART II.

Table of Fees in the Courts of Judges and Subordinate Judges and in the Revenue Courts, when the Suit in the Revenue Courts, by which the process is issued, is valued at a sum exceeding Rs. 1,000.

Article 1.—In every case in which personal or substituted service of any process on parties to the cause is required—

when not more than four persons are to be served with the same document, *one fee* .. .. Rs. 2 0 0

when such persons are more than four in number, then the fee above-mentioned and an additional fee of 8 annas for every such person in excess of four .. .. Re. 0 8 0

Article 2.—In every case in which personal or substituted service of any process on any persons who are not parties is required—

when the number of such persons is not more than four, *one fee* .. .. Rs. 2 0 0

when there are more than four such persons, then the fee above-mentioned for the first four and an additional fee of 8 annas for every one in excess of that number .. .. Re. 0 8 0

Article 3.—Where process of attachment of property by actual seizure is issued—

(*a*) for the seizure under the order of attachment .. Rs. 2 0 0

(*b*) for each man necessary to ensure safe custody of property so attached, when such man is actually in possession, *per diem*. Re. 0 8 0

(as amended by G. L. 11, dated 8—8—1921.)

Note 1.—When process of attachment is issued in a number of cases relating to the same or neighbouring villages, the fee (*a*) must be paid in each case, the daily fee (*b*) only for the men actually employed.

Note 2.—The daily fee (*b*) is to be paid at the time of obtaining the process for so many days as the Court shall order, not being ordinarily less than fifteen days, and the number of days required for the coming and going of the officer; but when the officer is not to be left in possession then the daily fee is to be paid only for the time to be occupied by the officer going, effecting the attachment, and returning. When the inventory filed by the judgment-creditor shows the property to be of such small value that the expense of keeping it in custody may probably exceed the value, the Court shall fix the daily fee with reference to the provisions of Order 21, rule 43 of the Code of Civil Procedure:

Provided that if it appears that for any reason the number of days fixed by the Court under this note, and in respect of which fees have been paid, is likely to be exceeded, and the decree-holder desires to maintain the attachment, the decree-holder shall apply to the Court to fix such further number of days as may be necessary, and the additional fees in respect thereof shall be paid in the manner provided in rule 3. If such additional fees be not paid within the period originally fixed, and in respect of which fees have been paid, the attachment shall cease on the expiry of that period.

Article 4.—For the proclamation and publication of any order of prohibition under Order 21, rule 54 of the Code of Civil Procedure, irrespective of the number of such proclamations or publications .. Rs. 2 0 0

Article 5.—For the publication by posting up of a copy or copies of the notification of any proceeding or process, not specially mentioned in any article of this Part, irrespective of the number of such publication. Rs. 2 0 0

Article 6.—For executing a decree by the arrest of the person or of executing a warrant of arrest before judgment (G. L. No. 7 of 1922) .. ..Rs. 10 0 0

Article 7.—When an order for the sale of property, other than an order for the sale of distrained property under Act VIII of 1885 is issued—

(*a*) for proclaiming the order of sale under Order 21, rule 66 of the Code of Civil Procedure, a fee of .. Rs. 2 0 0

(*b*) for selling the property, a percentage or poundage on the gross amount realized by the sale up to Rs. 1,000 at the rate of .. .. 2 *per cent.*

together with a fee on all excess of gross proceeds beyond Rs. 1,000 at the rate of .. .. 1 *per cent.*

Provided that, where a sale of immoveable property is set aside under Order 21, rules 89, 90 and 91 of the Code of Civil Procedure, or under section 174 of the Bengal Tenancy Act, VIII of 1885, any poundage or other fee charged for selling the property shall on application be refunded.

Provided further that no refund shall be made on the application of the decree-holder when a sale is set aside on the ground of material irregularity or fraud in publishing and conducting the sale and it appears that the decree-holder was privy thereto. (Rule 5 of 1921.)

Note 1.—The fee under clause (*a*) must be paid when the process is obtained.

The percentage or poundage under clause (*b*) must be paid—

(1) in a case where the purchaser is a person other than the decree-holder—at the time of making the application for payment of the proceeds of sale out of Court, as provided in Rule 4; and

(2) in a case where the decree-holder has been permitted to purchase —at the time of the presentation of his application for permission to set off the purchase-money against the amount of his decree as provided in Rule 5.

Note 2.—The percentage leviable under this article shall be calculated on multiples of Rs. 25, *i.e.*, a poundage fee of As. 8 should be levied for every Rs. 25 or part of Rs. 25 realized by the sale up to Rs. 1,000 and, in the case of the proceeds of the sale exceeding Rs. 1,000, an additional fee of As. 4 for every Rs. 25 or part thereof should be levied.

Note 3.—In cases in which several properties are sold in satisfaction of one decree, only one poundage fee, calculated on the gross sale proceeds, should be levied, 2 *per cent.* being charged on the gross proceeds up to Rs. 1,000 and 1 *per cent.* on such proceeds exceeding Rs. 1,000.

Article 8.—For service of any process not specified in any preceding article of this Part .. .. Rs. 2 0 0

PART III.

Table of Fees in the Courts of Munsifs and of Small Causes, and in the Revenue Courts, when Part II does not apply [except in the Suits specified in Part IV.]

Article 1.—In every case in which personal or substituted service of any process on parties to the cause is required—

where not more than four persons are to be served with the same document, *one fee* .. .. Re. 1 0 0

where such persons are more than four in number, then the fee above-mentioned and an additional fee of four annas for every such person in excess of four .. .. Re. 0 4 0

Article 2.—In every case in which personal or substituted service of any process on any persons who are not parties is required—

where the number of such persons is not more than four, *one fee* .. .. Re. 1 0 0

where there are more than four such persons, then the fee above-mentioned for the first four and an additional fee of four annas for every one in excess of that number .. .. Re. 0 4 0

Article 3.—Where process of attachment of property by actual seizure is issued—

(*a*) for the seizure under the order of attachment .. Re. 1 0 0

(*b*) for each man necessary to ensure the safe custody of property so attached when such man is actually in possession, *per diem*. Re. 0 8 0

(as amended by G. L. 11, dated 8—8—21).

Note 1.—When process of attachment is issued in a number of cases relating to the same or neighbouring villages, the fee (*a*) must be paid in each case, the daily fee (*b*) only for the men actually employed.

Note 2.—The daily fee (*b*) is to be paid at the time of obtaining the process for so many days as the Court shall order, not being ordinarily less than fifteen days, the number of days required for the coming and going of the officer; but, when the officer is not to be left in possession, then the daily fee is to be paid only for the time to be occupied by the officer in going, effecting the attachment, and returning. When the inventory filed by the judgment-creditor shows the property to be of such small value that the expense of keeping it in custody may probably exceed the value, the Court shall fix the daily fee with reference to the provisions of O. 21, R. 43 of the Code of Civil Procedure:

Provided that, if it appears that, for any reason, the number of days fixed by the Court under this note, and in respect of which fees have been paid, is likely to be exceeded, and the decree-holder desires to maintain the attachment, the decree-holder shall apply to the Court to fix such further number of days as may be necessary, and the additional fees in respect thereof shall be paid in the manner provided in Rule 3. If such additional fees be not paid within the period originally fixed, and in respect of which fees have been paid, the attachment shall cease on the expiry of that period.

Article 4.—For the proclamation and publication of any order of prohibition under O. 21, R. 54 of the Code of Civil Procedure, irrespective of the number of such proclamations or publications .. Re. 1 0 0

Article 5.—For the publication by posting up of a copy or copies of the notification of a proceeding or process, not specially mentioned in any article of this part, irrespective of the number of such publications .. Re. 1 0 0

Article 6.—For executing a decree by the arrest of the person or for executing a warrant of arrest before judgment. (G. L. No. 7 of 1922) .. .. Rs. 4 0 0

Article 7.—Where an order for the sale of property other than an order for the sale of distrained property under Act VIII of 1885 is issued—

(*a*) for proclaiming the order of sale under Order 21, rule 66 of the Code of Civil Procedure, a fee of .. .. Re. 1 0 0

(*b*) for selling the property, a percentage or poundage on the gross amount realized by the sale up to Rs. 1,000 at the rate of *2 per cent.*, together with a further fee on all excess of gross proceeds beyond Rs. 1,000 at the rate of .. .. *1 per cent.*

Provided that when a sale of immoveable property is set aside under O. 21, Rr. 89, 90 or 91 of the Code of Civil Procedure, or under S. 174 of the Bengal Tenancy Act any poundage or other fee charged for selling the property shall, on application, be refunded.

Provided further that no refund shall be made on the application of the decree-holder when a sale is set aside on the ground of material irregularity or fraud in publishing and conducting the sale and it appears that the decree-holder was privy thereto. (Rule 5 of 1921.)

Note 1.—The fee under clause (*a*) must be paid when the process is obtained.

The percentage or poundage under clause (*b*) must be paid—

(1) in a case where the purchaser is a person other than the decree-holder—at the time of making the application for payment of the proceeds of sale out of Court as provided in Rule 4, and

(2) in a case where the decree-holder has been permitted to purchase —at the time of the presentation of his application for permission to set off the purchase-money against the amount of his decree as provided in Rule 5.

Note 2.—The percentage leviable under this article shall be calculated on multiples of Rs. 25, *i.e.*, a poundage fee of As. 8 should be levied for every Rs. 25 or part of Rs. 25 realized by the sale up to Rs. 1,000, and, in the case of the proceeds of the sale exceeding Rs. 1,000, an additional fee of As. 4 for every Rs. 25 or part thereof should be levied.

Note 3.—In cases in which several properties are sold in satisfaction of one decree, only one poundage fee, calculated on the gross sale-proceeds, should be levied, 2 *per cent.* being charged on the gross sale-proceeds up to Rs. 1,000, and 1 *per cent.* on such proceeds exceeding Rs. 1,000.

Article 8—For service of any process not specified in any preceding article of this part .. .. Re. 1 0 0

PART IV.

Table of Fees in the Courts of Munsifs, in Small Cause Courts, and in the Revenue Courts, where the Suit is for Debt or Damage to Personal Property, or for Rent and where the Claim does not exceed Rs. 50.

Article 1.—In every case in which personal or substituted service of any process on parties to the cause is required—

where not more than four persons are to be served with the same document, *one fee* .. .. Re. 0 8 0

where such persons are more than four in number, then the fee above-mentioned and an additional fee of As. 4 for every such person in excess of four .. .. Re. 0 4 0

Note.—Suits under sections 30 and 52 of the Bengal Tenancy Act, 1885 (VIII of 1885), are suits for rent within the meaning of the heading of this part.

Article 2.—In every case in which personal or substituted service of any process on any persons who are not parties is required, for each person to be served .. .. Re. 0 4 0

Article 3.—Where process of attachment of property by actual seizure is issued—

(*a*) for the seizure under the order of attachment .. Re. 0 8 0

(*b*) for each man necessary to ensure the safe custody of properties so attached when such man is actually in possession, *per diem* (as amended by G. L. 11, dated 8—8—21) .. .. Re. 0 8 0

Note 1.—When process of attachment is issued in a number of cases relating to the same or neighbouring villages, the fee (*a*) must be paid in each case, the daily fee (*b*) only for the men actually employed.

Note 2.—The only fee (*b*) is to be paid at the time of obtaining the process for so many days as the Court shall order, not being ordinarily less than 15 days, and the number of days required for the coming and going of the officer; but, when the officer is to be left in possession, then the daily fee is to be paid only for the time to be occupied by the officer in going, effecting the attachment, and returning. When the inventory filed by the judgment-creditor shows the property to be of such small value that the expense of keeping it in custody may probably exceed the value, the Court shall fix the daily fee with reference to the provisions of O. 21, R. 43 of the Code of Civil Procedure:

Provided that, if it appears that, for any reason, the number of days fixed by the Court under this note, and in respect of which fees have been

paid, is likely to be exceeded and the decree-holder desires to maintain the attachment, the decree-holder shall apply to the Court to fix such further number of days as may be necessary, and the additional fees in respect thereof shall be paid in the manner provided in rule 3. If such additional fees be not paid within the period originally fixed, and in respect of which fees have been paid, the attachment shall cease on the expiry of that period.

Article 4.—For the proclamation and publication of any order of prohibition under O. 21, R. 54 of the Code of Civil Procedure, irrespective of the number of such proclamations or publications .. Re. 1 0 0

Article 5.—For the publication by posting up of a copy or copies of the notification of any proceeding or process, not specially mentioned in any article of this Part, irrespective of the number of such publications .. .. Re. 1 0 0

Article 6.—For executing a decree by arrest of the person or for executing a warrant of arrest before judgment (G. L. No. 7 of 1922). Re. 1 0 0

Article 7.—Where an order for sale of property other than an order for the sale of distrained property under Act VIII of 1885 is issued—

(*a*) for proclaiming the order of sale under O. 21, R. 66 of the Code of Civil Procedure, a fee of .. .. Re. 1 0 0

(*b*) for selling the property, a percentage or poundage on the gross amount realized by the sale up to Rs. 1,000, at the rate of *2 per cent.*, together with a further fee on all excess of gross proceeds beyond Rs. 1,000, at the rate of .. .. 1 *per cent.*

Provided that when a sale of immoveable property is set aside under O. 21, Rr. 89, 90 or 91 of the Code of Civil Procedure or under section 174 of the Bengal Tenancy Act (VIII of 1885), any poundage or other fee charged for selling the property shall, on application, be refunded.

Provided further that no refund shall be made on the application of the decree-holder when a sale is set aside on the ground of material irregularity or fraud in publishing or conducting the sale and it appears that the decree-holder was privy thereto. (Rule 5 of 1921.)

Note 1.—The fee under clause (*a*) must be paid when the process is obtained.

The percentage or poundage under clause (*b*) must be paid—

(1) In a case where the purchaser is a person other than the decree-holder—at the time of making the application for payment of the proceeds of sale out of Court, as provided in Rule 4, and

(2) In a case where the decree-holder has been permitted to purchase —at the time of the presentation of his application for permission to set off the purchase-money against the amount of his decree, as provided in Rule 5.

Note 2.—The percentage leviable under this article shall be calculated on multiples of Rs. 25, *i.e.*, a poundage fee of eight annas should be levied for every Rs. 25 or part of Rs. 25 realized by the sale up to Rs. 1,000, and in the case of proceeds of the sale exceeding Rs. 1,000, an additional fee of four annas for every Rs. 25 or part thereof should be levied.

Note 3.—In cases in which several properties are sold in satisfaction of one decree, only one poundage fee, calculated on the gross sale-proceeds, should be levied, *2 per cent.* being charged on the gross proceeds up to Rs. 1,000 and 1 *per cent.* on such proceeds exceeding Rs. 1,000.

Article 8.—For service of any process not specified in any preceding article of this Part .. .. Re. 1 0 0

2. Notwithstanding Rule 1, no fee shall be chargeable for serving and executing any process, such as a notice, rule, summons or warrant of arrest,

which may be issued by any Court of its own motion, solely for the purpose of taking cognizance of, and punishing any act done or words spoken in contempt of its authority.

3. The fees hereinbefore provided, except those mentioned in the next rule, shall be payable in advance at the time when the petition for service or execution is presented, and shall be paid by means of stamps affixed to the petition, in addition to the stamps necessary for its own validity.

4. The proceeds of a sale effected in execution of any decree will only be paid out of Court on any application made for that purpose in writing and the poundage fee for selling the property provided in clause (*b*) of Article 7 of Parts II, III and IV must be paid by stamps affixed to or impressed upon, the first of such applications whether it be or not made by the person who obtained the order for sale, or whether it does or does not extend to the whole of the proceeds. No fee will be chargeable upon any such application subsequent to the first.

5. In cases in which the decree-holder applies for leave to purchase under O. 21, R. 72 of the Code of Civil Procedure, no order to set off the purchase-money against the amount of the decree shall be made upon the application for leave to purchase. Such order shall be made upon a petition presented after the property has been knocked down to the decree-holder at the auction-sale, and such petition shall be stamped with stamps of the value of the poundage fee due for selling the property under clause (*b*) of Article 7 of Parts II, III and IV.

6. Upon the hearing of such petition, the costs of execution, including the amount of the stamps attached to the petition, shall be ascertained, and shall be added to the decree; and in cases in which the amount of the purchase-money exceeds the amount of the decree, and of such costs, the decree-holder, who has so purchased the property, shall pay into Court the sum of 25 *per cent.* upon the balance of the purchase-money after deducting the amount of the decree and of such costs, and shall pay the balance at the expiration of fifteen days in accordance with O. 21, R. 85 of the Code of Civil Procedure.

7. Throughout, or in any part of, the localities mentioned in the Schedule annexed to this rule, and for the periods of the year during which travelling except by boat is, in the opinion of the District Judge, impracticable, the fees chargeable for the service of processes shall be increased by 25 *per cent.* in order to provide for payment of the boat-hire or ferry toll rendered necessary by the state of the country. The additional fees may, however, be reduced to 12½ *per cent.* over the fees ordinarily leviable at the discretion of the District Judge in any part of the district where, or at any season of the year when, the levy of the larger amount is found to be unnecessary.

Note 1.—The process-server's boat-hire passed under this rule should alone be included under the head of "Process serving charges" under "Special Contingencies".—*Vide* Resolution of the Financial Department of the Government of Bengal, dated the 4th August, 1890.

Note 2.—The fee levied from parties on account of boat-hire should be realised in Court-fee stamps. If the District Judge finds that the total annual realisation of boat-hire exceeds the amount necessary to be paid out as boat-hire in the course of the year, he should exercise the discretion given him by Rule 7 above in such a way as to reduce the total annual realisation on account of the boat-hire to the amount necessary to be expended for that purpose. Such fees shall be entered in column 7 of Form No. M-60 for the purpose of ascertaining whether the total realisation of boat-hire in Court-fees covers the total annual expenditure on account of boat-hire. (Rule No. 7 of 1921.)

Districts.		*Local Areas.*
24-Parganas	..	The Magrahat, Falta, Kulpi, Kakdip and Mathurapur Thanas of the Diamond Harbour Munsifi; the Baruipur, Matla and Joynagar Thanas of the Baruipur Munsifi; the Bhangar, Sonarpur, Vishnupur and Budge-Budge Thanas of the Sadar Munsifi; and the Haroa and Hasanabad Thanas of the Basirhat Munsifi.
Nadia	..	The whole district.
Murshidabad	..	,,
Jessore	..	,,
Khulna	..	,,
Hooghly	..	The Arambagh Munsif.
Rajshahi	..	The whole district.
Dinajpur	..	The Raiganj, Kaliganj and Bunsihari Thanas of the Raiganj Munsifi.
Rangpur	..	The Kurigram and Gaibanda Munsifi and the Kaliganj Thana of the Sadar Munsifi.
Pabna-Bogra	..	The whole district.
Dacca	..	,,
Mymensingh	..	,,
Faridpur	..	,,
Backergunge	..	,,
Tippera	..	,,
Noakhali	..	,,
Chittagong	..	The Cox's Bazar, Hathazari, North Raojan Munsifis.
Cachar	..	The whole district.
Sylhet	..	,,
Goalpara	..	,,
Kamrup	..	,,
Darrang	..	,,
Nowgong	..	,,
Sibsagar	..	,,
Lakhimpur	..	,,

8. (*a*) In such districts or parts of districts as are not for the time being subject to Rule 7, when, in order to the service of any process, the peon has to cross a ferry, then the amount, if any, legally eligible as toll shall be paid by the Court executing such process from its permanent advance.

(*b*) The permanent advance mentioned in this Rule is the special permanent advance sanctioned by the Local Government for the purposes of the Rules.

9. In cases in which the process is to be served in the jurisdiction of another Court, the proper fee chargeable under Rule 1 read with Rule 7 shall be levied, in the manner above directed, on the application for the transmission of the process to that Court, and a note shall be made on the process stating that this has been done. A Court, which receives from another Court, whether in the same Province or not, a process bearing a certificate that the proper fee has been levied, shall cause it to be served without further charge.

Note 1.—The fees paid in pursuance of these rules must, in all proceedings, be deemed and treated as part of the necessary and proper cost of the party who pays them.

Note 2.—By arrangement between the Government of India and His Highness the Nizam of Hyderabad, Civil processes for service of execution within His Highness' territories will be issued and served in accordance with the above rule.

Processes issued by Civil Courts in His Highness the Nizam's territories will be served or executed in the Province of Bengal Presidency free of charge.

Note 3.—As regards the service of process and execution of decrees in the Chittagong Hill Tracts, *see* Chapter I, Rules 41 and 87 of Civil Circular Order of the Calcutta High Court.

Note 4.—Process issued by Courts in India for service by Colonial Courts must be accompanied by a remittance sufficient to meet the cost of service. A sum of Rs. 32 is considered likely to cover such cost.

In Mauritius the cost of service is Rs. 3 per person in town, and to this must be added 75 cents per mile travelling allowance for service in the country. For processes not accompanied by an English translation and requiring translation in Mauritius, an additional fee of Rs. 10 should be remitted.

In the case of summons intended for service on a person in Mauritius the procedure indicated by O. 5, R. 25 of the Code of Civil Procedure should whenever possible be in preference to effecting service through the Mauritius Government.

V.—PROCESS FEES IN CENTRAL INDIA.

In exercise of the powers conferred by section 20 of the Court-Fees Act, 1870 (VII of 1870), as applied to the cantonments of Mhow, Nowgong and Sehore, and Indore Residency Bazaars and the Civil Lines of Nowgong, and with the previous sanction of the Governor-General in Council, the Hon'ble the Governor-General in India is pleased to issue the following rules to regulate the fees chargeable for serving and executing processes in the said areas:—

I. The Courts in the said areas shall, for the purpose of levying fees for the service of process, be divided into three grades:—

Grades.	Courts.
First ..	The Courts of the Agent to the Governor-General in Central India.
Second ..	First Appellate Courts.
Third ..	District Courts, Courts of Small Causes and other Civil Judges and Courts of Magistrates.

II. Fees for the service of processes shall be levied in each grade of Court according to the following scale, namely:—

Nature of process.	Courts of First grade.	Courts of Second grade.	Courts of Third grade.
	Rs. A. P.	Rs. A. P.	Rs. A. P.
Summons, notice or other process not being a warrant of arrest or attachment ..	2 0 0	1 0 0	0 4 0
Warrant of arrest ..	4 0 0	2 0 0	0 8 0
Warrant of attachment ..	4 0 0	2 0 0	2 0 0

III. A separate process shall be issued for each person summoned or arrested, or upon whom a notice is served; and subject to the Rules IV and V a separate fee shall be charged for each process.

IV. When a service is set aside in any enquiry under the provisions of Order 5, Rule 19 of the Code of Civil Procedure, 1908, or when witnesses, etc., have to be summoned a second time in consequence of the Court not sitting or not taking up or not completing the hearing of the case on the day on which they were first summoned, no further fee shall be levied on re-issue. In all other cases one-half of the fees shall be levied upon re-issue.

V. When any process other than a warrant of arrest or of attachment is to be served upon four or more persons being parties, one fee only shall, according to the scale in Rule II, be charged in respect of the first four processes and an additional fee, according to the subjoined scale, shall be charged for each process to be served in excess of four provided that the aggregate amount of the fee leviable under this rule shall not exceed the maximum prescribed for each grade of Court.

Nature of process.	Courts of First grade.	Courts of Second grade.	Courts of Third grade.
	Rs. A. P.	Rs. A. P.	Rs. A. P.
Rates of additional fee ..	0 8 0	0 4 0	0 2 0
Maximum	15 0 0	10 0 0	0 2 0

VI. The stamps received for Court-fees shall be applied to the application upon which the process is to be issued.

VII. A process issued by any Court in British territory whether of Civil, Revenue, or Criminal jurisdiction or by any Court established by or continued by the Governor-General in Council or by any Civil or Revenue Court in Native States in Central India shall be served free of charge by any Court in the said areas, if it be certified on the process that the proper fee has been levied under the rules in force in the territory in which the Court issuing the process is situated. When any Court in the said areas transmit a process for service or execution to any Court beyond its jurisdiction a certificate shall be endorsed on the process that the fee chargeable under Rule II or Rule V as the case may be has been levied.

VIII. Ordinarily process-servers should travel on foot when proceeding to serve or execute processes, but in special cases, the Judge of the Court issuing the process may permit the journey to be made by Railway. In such cases the permission should be in writing and the railway fare should be paid from judicial contingencies, and not charged to the person in whose instance the process is issued.

IX. A Court may remit the process fee, in whole or in part, whenever it is satisfied that the complainant or the accused has not the means of paying them.

X. No fee shall be chargeable for any process of a Criminal Court issued through the Police in cognizable cases, or for any process issued by a Court of its own motion in any case whatsoever or of any process issued upon the complaint of a public officer, acting as such officer. See *Gazette of India*, dated 27th September, 1913, Pt. II, pp. 1797-1799.

VI.—LAHORE HIGH COURT.

PROCESS-FEES AND PROCESS-SERVING ESTABLISHMENTS.

(*Section* 20, *Court-Fees Act,* 1870.)

REMARKS AND DIRECTIONS.

The following rules regarding process-fees and process-serving establishments have been made by the High Court with the sanction of Government and are re-published for the guidance of the Courts of the Punjab in supersession of all previous rules on the subject:—

The rules in Parts I, II and III are framed under sections 20 and 32 of the Court-Fees Act, and those in Part III have been made with the concurrence of the Financial Commissioners.

2. The rules in Parts I, II and III, regarding fees in civil processes and the number of process-servers to be entertained, call for no explanation. Attention is invited to section 21 of the Court-Fees Act, which requires that a table of the fees chargeable on process in each Court should be hung up in some conspicuous place, and to the fact that under rule 4 an additional fee is now leviable on multiple processes.

3. The Court-Fees Act, section 20, clause (*ii*) restricts the levy of a fee on criminal process to non-cognizable cases. The levy of a fee in such cases is now authorised by rule 5 whether the process is served through the police or the process-serving establishment, and the fee for such processes has been fixed at a uniform rate of four annas.

4. Courts are reminded that, under section 31 of the Court-Fees Act, in cases of conviction of an accused of the offence of wrongful confinement, wrongful restraint, or of any non-cognizable offence, the Court must by its order direct that the accused pay to the complainant any sum that he may have expended in issue of processes; and such sum may be recovered in the manner provided for recovery of fines.

5. Notwithstanding the separation of the Revenue from the Civil Courts, the control over income derived from process-fees in all Courts and Revenue Offices, and expenditure on establishment, etc., from the source, is still at the desire of the Financial Commissioners, retained by the High Court, to which all references on the subject should be made as heretofore. It will be necessary for Commissioners and District Courts to maintain the registers and accounts prescribed by these Rules and Orders, and to submit the annual returns, in the prescribed form, referred to in paragraph 12 of Part IV of the rules.

6. The District Judge alone has powers, under the Punjab Courts Act, with regard to ministerial officers of the Civil Courts and is responsible that proper attention is paid by the process-serving establishment serving under his orders to the service of processes issued by Revenue and Criminal Courts, but the Local Government has, with effect from 1st August, 1914, authorised the transfer of the control of the process-serving establishments of all Courts in each district from the District Court to the Senior Subordinate Judge.

7. The Civil Nazir must be regarded as the head of the process-serving establishment; he will submit any reports relating to the members or the duties of the establishment to the Senior Subordinate Judge.

8. In making appointments to the post of Civil Nazir care should be taken to appoint thoroughly efficient men only. A person who is not competent to examine and keep accounts in both English and Urdu should not usually be entertained. Ordinarily, the Civil Nazir should not be employed on duties connected with the Criminal and Revenue Courts for which the District Nazir must be held solely responsible.

9. The Civil Nazir, Naib Nazirs, Maded Naib Nazirs, Execution Bailiffs and process-servers will all be appointed by the Senior Subordinate Judge and will be dealt with under the powers conferred upon him by the Punjab Courts Act. (*See* paragraph 6 above.)

10. No one who is sickly, old, or incapable of a good deal of physical exertion should be appointed an Execution Bailiff or process-server. A knowledge of Urdu should be regarded as an indispensable qualification for appointment to the post of Execution Bailiff, and no one should ordinarily be appointed a process-server unless he has passed the Upper Primary Standard and can read and write some language current in the province. No process-server should be retained in service who is not capable of fully and intelligently carrying out the rules relating to the proper service of processes.

11. Ordinarily promotion ought to be confined within the line, and no employee or candidate in the clerical line should have any claim to a Bailiff's or Naib Nazir's post if there is a fit peon or Bailiff forthcoming.

Superior educational qualifications alone should not justify an outsider being given a superior appointment in this line, if a competent person, capable of doing the work efficiently, can be found in the lower grades.

12. The employment of process-servers upon duties unconnected with the serving of processes is absolutely forbidden.

13. The Civil Nazir will be expected to keep up the Civil Deposit and Repayment Accounts and to manage the execution of decree business. It is left to Senior Subordinate Judges to issue detailed instructions as to the duties which are to be performed by the Civil Nazir. The Civil Nazir should devote his time to the distribution of business amongst process-servers, the transmission of processes to agencies located at tahsils for service, the management of the accounts and correspondence regarding the payment of diet money to witnesses, and other similar matters connected with the carrying out of the system of serving process through agencies located at outlying tahsils.

14. The amount of security to be given by the various grades of officers employed in the process-serving establishment is as follows:—[*Omitted.*]

15. The maximum scale of process-serving establishments allowed to each district has been fixed, but the District Judge has power to distribute the process-servers sanctioned for the District Courts in such manner as he thinks fit, with reference to the amount of business coming before the different Courts and the distances to be traversed in serving processes; it must be understood, however, that the full number of process-servers should not be entertained unless they are actually required. Civil Register No. XXV is intended to show how the work is distributed amongst the different process-servers and controlling authorities should frequently inspect this register for the purpose of satisfying themselves that no unnecessary process-servers are entertained. Every marked diminution in work or income should be followed by a reduction of establishment.

PART I.

RULES UNDER SECTION 20, CLAUSES (*i*) AND (*ii*).

Rules made by the High Court under the power conferred by section 20, clauses (i) and (ii) of the Court-Fees Act, VII of 1870, confirmed by the Local Government regarding the fees chargeable for serving and executing processes issued by the High Court in its appellate jurisdiction and by the Civil, Revenue and Criminal Courts established within the local limits of such jurisdiction.

RULES.

1. The Civil and Revenue Courts of the Punjab shall, for the purpose of levying process-fees, be divided into three grades as shown in the annexed table:—

Grade.	Civil Courts.	Revenue Courts.
First ..	The High Court.	The Court of the Financial Commissioners.
Second ..	District Courts.	Courts of Commissioners.
Third ..	Courts subordinate to the District Court.	Courts of Collectors and Assistant Collectors.

Note.—For the purpose of this rule a Tribunal established under section 12 of Punjab Act, VIII of 1925 (The Sikh Gurdwaras Act of 1925) shall be deemed to be a Civil Court of the second grade.

2. Fees for the service of processes shall be levied in each grade of Court according to the following scale, namely:—

Nature of process.	Courts of First grade.	Courts of Second grade.	Courts of Third grade.
	Rs. A. P.	Rs. A. P.	Rs. A. P.
Summons, notice or other process, not being a warrant of arrest or of attachment	2 0 0	1 0 0	0 8 0
Warrant of attachment	4 0 0	2 0 0	1 0 0
Warrant of arrest	4 0 0	2 0 0	2 0 0

Note.—The classification of Revenue Courts in rule 1 and the scale of fees to be levied in them under rule 2 have been sanctioned by the Financial Commissioners.

3. A separate process shall be issued for each person summoned or arrested, or upon whom a notice is served; and, *subject to the rule next following,* a separate fee shall be charged for each process.

4. When any process, other than a warrant of arrest or of attachment, is to be served upon four or more persons being parties, one fee only shall, according to the scale in rule 2, be charged in respect of the first four processes and an additional fee, according to the subjoined scale, shall be charged for each process to be served in excess of four, provided that the aggregate amount of the fee leviable under this rule shall not exceed the maximum prescribed for each grade of Court:—

	Courts of First grade.	Courts of Second grade.	Courts of Third grade.
	Rs. A. P.	Rs. A. P.	Rs. A. P.
Rate of additional fee	0 8 0	0 4 0	0 2 0
Maximum	15 0 0	10 0 0	5 0 0

Note.—This rule is not applicable to processes issued for service on witnesses.

5. No fee shall be chargeable for any process of a Criminal Court issued through the police in cognizable cases. In non-cognizable cases a fee of four annas shall be levied for every such process, *whether such process be issued through the process-serving establishment or the police.*

6. A process issued by any Court in British territory, whether of Civil, Revenue or Criminal jurisdiction, shall be served free of charge by any Court in the Punjab if it be certified on the process that the proper fee has been levied under the rules in force in the territory in which the Court issuing the process is situated. When any Court in the Punjab, whether of Civil, Revenue or Criminal jurisdiction, transmits a process for service or execution to any Court beyond its jurisdiction, a certificate shall be endorsed on the process that the fee chargeable under rule 2 or rule 4, as the case may be, has been levied.

7. Ordinarily process-servers should travel on foot when proceeding to serve or execute processes; but in special cases, the Judge of the Court issuing the process may permit the journey to be made by railway. In such cases the permission should be in writing and the railway fare should be charged to the budget heads. Travelling allowance of process-servers under process-serving establishment are not charged to the person at whose instance the process is issued.

PART II.

RULES UNDER SECTION 20, CLAUSE (*iii*).

Rules made by the High Court under the power conferred by section 20, clause (iii), of the Court-Fees Act, VII of 1870, *confirmed by the Local Government regarding the remuneration of the process-servers and all other persons employed by leave of a Court in the service or execution of process.*

[Omitted as being purely administrative matters relating to the pay and strength of the process-serving staff.]

PART III.

RULES UNDER SECTION 22.

Rules made by the High Court and the Financial Commissioners, with the approval of the Local Government, under the power conferred by section 22 of the Court-Fees Act, VII of 1870, *regarding the number of persons necessary to be employed for the service and execution of processes issued out of the Civil, Criminal and Revenue Courts, established within the local limits of their jurisdiction, respectively.*

RULES,

1. The High Court shall fix, and shall from time to time, as may be necessary, alter the maximum number of process-servers to be retained for the Court of each Commissioner, District and Sessions Judge, and for each district in the province.

2. The number of process-servers to be retained in each district shall be allotted by the Senior Subordinate Judge, subject to the control of the District Judge and High Court, to the various Courts of the District in such manner as shall be most convenient for the service of processes.

3. In submitting proposals with regard to the maximum number of process-servers to be retained in any district, and in distributing the process-servers retained amongst the various Courts, the Senior Subordinate Judge

should ascertain, and report when necessary, the number of processes issued from his own Court and from every other Civil, Revenue and Criminal Court in the district during each month of the previous year; and the maximum number of process-servers fixed for each Court shall be so many as are sufficient for the service of the largest number of processes ascertained to have been issued in any one month. In calculating the number of process-servers capable of serving such ascertained number of process, regard shall be paid to—

(*a*) the average distance travelled by the peon;

(*b*) the nature of the country to be traversed and the local circumstances;

(*c*) the number of process-servers by whom the processes were actually served.[1]

4. Should it appear to the Court, on the motion of a party to a suit or proceeding, or otherwise, that, for the convenience of the parties or for some other reason, it is expedient that any process should be executed by special messenger, such process shall be so executed. Except in the case of a warrant for arrest, a special fee will be payable for such emergent service; and the Court will, at the time of making its order, declare by whom the fee shall be paid and whether it shall be included in the costs of the suit or be charged to a particular party.

5. The process-servers entertained under these rules shall be employed exclusively in the work of serving and executing processes.

PART IV.

SUBSIDIARY INSTRUCTIONS REGARDING PROCESS-FEE AND PROCESS-SERVING ESTABLISHMENTS FOR THE GUIDANCE OF THE COURTS AND PROCESS-SERVERS IN THE PUNJAB.

1. Process-serving establishments are appointed and dealt with in accordance with sections 35 to 37 of the Punjab Courts Act, 1918, as amended.

2. Every appointment of a process-server shall be registered in the Court of the Senior Subordinate Judge of the district in which the appointment is made, together with the following particulars:—The name of the process-server, his age, his place of abode, his father's name, and the date of appointment. The names of the process-servers should be entered according to the date of their appointment in a register containing the above particulars, and a column of remarks should be added for the entry of such notice respecting the conduct of each process-server as the presiding Judge may from time to time deem it necessary to record.

3. There shall be one such register for the Commissioner's Court, one for the Court of the District Judge, one for the Senior Subordinate Judge's Court and other Subordinate Courts, and one for each Court of Small Causes.

4. Except in cases of necessity, when the special leave of the Court must be obtained, no person other than a registered process-server shall be employed in the service or execution of any Civil or Criminal process; the reason for granting such leave should be recorded.

5. Every registered process-server shall be supplied with a belt and badge showing in English and Vernacular the Court to which he belongs. The cost of such belt and badge shall be defrayed from judicial contingencies.

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[1] In fixing the number of process-servers regard must be had to the system of serving processes through agencies located in tahsils.

6. The total amount of contingencies expended on process-serving establishments should not exceed ten *per cent.* of the cost of such establishment for the year.

7. In selecting persons as process-servers those who can read and write should be preferred. Ordinarily no one should be appointed as process-server unless he has passed the Upper Primary Examination.

8. No process shall be prepared or issued until the proper fee for the service thereof has been paid. When such fee is paid the Court-fee label denoting the fee shall be affixed to the diary of process-fees and immediately punched, the process shall then be prepared, it being left to the party who applied for the process to issue it or not as he thinks fit. This will obviate the necessity for making any refund of the value of Court-fees filed on account of processes which are not eventually issued.

9. On every process issued from any Court the following particulars shall be recorded, namely:—(1) the name of the process-server deputed to serve or execute the same; (2) the period within which the process-server is required to certify service or execution; (3) the amount of fee paid and the date of payment; and (4) the date of return after service or execution.

Such endorsement shall be signed by the Civil Nazir or Naib Nazir, or Bailiff.

10. An account of Court-fee stamps realised as process-fee of processes issued (Civil, Revenue and Criminal), of the number of process-servers employed, of the cost of establishment and of contingencies, shall be kept for each Court where a separate establishment is entertained.

11. A statement giving information on the above points should be submitted with the annual civil reports.

12. With the record of each Civil and Revenue case, and of each Criminal case in which process-fees are levied, should be kept a separate sheet of paper to be termed the 'Diary of process-fee' which should be devoted to the sole purpose of maintaining a record of process-fees. This diary should be in the prescribed form, and should form a portion of Part B. In it entries should be made in chronological order of every process ordered to be issued in the case, and the stamps should be affixed opposite each entry and cancelled immediately upon being affixed.

VII.—MADRAS HIGH COURT.

A.—PROCESS FEES.

I.—MUFFASAL CIVIL COURTS.

[1] 1. (1) The following schedule of fees chargeable for serving and executing process issued by the High Court of Madras in its appellate jurisdiction and by all Civil and Revenue Courts established within the High Court's appellate jurisdiction, having been framed by the High Court under section 20 of the Court-Fees Act, 1870, and confirmed by the Government of Madras and sanctioned by the Governor-General of India in Council, will come into force from the 1st day of July, 1884:—

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[1] Notification No. 209, Judicial, dated 16th June, 1884, *Fort St. George Gazette*, Pt. I, p. 382.

SCHEDULE OF PROCESS-FEES.

Nature of process.	Amount leviable in Any Court of Small Causes, District Munsiff's Court or Revenue Court.	Amount leviable in District Court or Judge's Court where the process is not issued in a Small Cause case.
	Rs. A. P.	Rs. A. P.
I. For each summons or notice—		
(*a*) to a single defendant, respondent or witness	0 8 0	2 0 0
(*b*) to every additional defendant, respondent or witness residing in the same village, if the processes be applied for at the same time	0 4 0	0 8 0
II. For every warrant—		
(*a*) of arrest in respect of every person to be arrested		
(*b*) of attachment in respect of every such warrant	1 0 0	2 0 0
(*c*) of sale in respect of every such warrant..		
(*d*) of delivery of possession in respect of every such warrant		
With an additional fee for the services of every officer entrusted with the warrant for each day after the third day, beginning with the day on which the warrant was issued.		
(*e*) if such officer is an amin	0 6 0	0 8 0
(*f*) if such officer is a peon	0 4 0	0 6 0
(*g*) if such officer is a Revenue Inspector ..	0 8 0	..
III. For every process in execution of a Village Court s decree	0 8 0	..
(*Note.*—If the process is not executed no further fee for re-issue shall be levied.)		
IV. For proclamation, injunction or order and every process not otherwise provided for .. an additional fee being leviable after the third day as above.	1 0 0	2 0 0
V. In respect of sales, a fee by way of poundage on the purchase money calculated at one anna in the rupee on the first 350 rupees, $\frac{1}{2}$ an anna in the rupee on any additional sum up to rupees 1,000 and $\frac{1}{4}$ anna in the rupee on any additional sum above rupees 1.000.		

Note 1.—Any party may deposit the cost of proceeding by railway or any public conveyance, where such is available, and in such case the process-server shall be bound to proceed by such railway or public conveyance and the cost so deposited shall be part of the costs of the cause.

Note 2.—For processes applied for and ordered to be executed as emergent, the fee will be the ordinary fee and half as much again.

Note 3.—If the poundage chargeable on the purchase-money should involve fractions of an anna, half-an-anna or more shall be taken as an anna and fractions less than half-an-anna shall be omitted from the amount payable. (*Added by notification, dated 29th April,* 1924.)

N. B.—(1) Each process should be paid for according to the time which it really occupies. The party must not be charged for time occupied in serving processes other than his own, but he must pay for all the days which his own process or processes would have occupied, if it or they had alone been entrusted to the server. When one applicant puts in several processes to be executed at the same time in the same locality, the charge for any additional days occupied on account of such processes may be distributed over them.

(2) The High Court considers that there is nothing objectionable in levying the additional fee in advance when it is calculated that the journey to and fro and the work to be done will take more than three days in all and that, for this purpose, a journey of 15 miles a day may fairly be taken as a rough basis of calculation, not necessarily to be adhered to in all circumstances.

(3) In cases, however, in which a process which would ordinarily have been executed within the three days allowed by the rules, has actually taken, contrary to expectation, more than three days to execute, the High Court considers that no additional fee need be collected subsequently for the excess number of days. The original levy should be regarded as final, as such cases are not frequent and there would be difficulty in collecting the excess.

2. [1] *Addendum to the schedule of process-fees.*—The following *addendum* to the schedule of fees made by the High Court and chargeable under the rules framed in accordance with the provisions of section 20 of the Court-Fees Act, VII of 1870, which has been confirmed by His Excellency the Governor in Council and sanctioned by the Government of India is published:—

(1) In every case in which application is made to a Court for the issue of process beyond the jurisdiction of the Court there shall be levied the fee that would be leviable for the issue of such process in the Court to which the application is made.

(2) The fees levied under this rule must be paid in Court-fee labels of the proper amount to be affixed to the application; such labels shall be punched by the officer appointed to receive the application, who will endorse a note on the process that the proper fee for the issue thereof has been levied.

(3) When process is forwarded by any Court in British India or in the State of Mysore or [in the State of Cochin], [Banganapalle, Sandur, Pudukkottai or Travancore] or [in the territories of His Highness the Nizam] to a Court subordinate to the High Court for execution, such subordinate Court shall accept the certificate endorsed on the process as sufficient proof that the proper fee for the issue thereof has been paid and shall deliver such process to the proper officer for service and shall retransmit the process to the Court by which such process was transmitted to it, with a return in the form number 121 (now Sch. I, Appendix B, Form No. 10), Civil Procedure Code, and with the endorsement of the process-server, showing, if service has been effected, in what manner it has been effected; and if service has not been effected, the reason why it has not been effected; and such endorsement shall be verified by oath or affirmation of the process-server.

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[1] Notification No. 398, Judicial, dated 1—8—1885, *Fort St. George Gazette,* Part I, p. 628.

The Honourable the Judges consider that the levy of ferry charges is unauthorized and undesirable especially when the process-server is allowed to collect the charges direct from the parties as is reported to be the case in the Kistna district. As, however, cases in which Court charges are levied cannot be numerous, they do not consider it necessary to draw up a complete schedule of rates for private ferries in each district and to authorize the collection of fees by rule.

The Honourable the Judges are therefore of opinion that the fees in such cases may be borne by Government and debited to contingencies.

II. (*a*) CALCULATION OF POUNDAGE.

(1) *Poundage to be charged on each lot.*

The High Court is of opinion that poundage should be calculated on sale proceeds of each lot separately.

(2) *Poundage on bids by decree-holders.*

Rule 154 (1) of the Civil Rules of Practice provides that "if the applicant purchases the property with the leave of the Court, and is allowed to set off the purchase-money against any sum due to him, he shall pay the amount chargeable as poundage to the person appointed to sell the property, so soon as he is declared to be the purchaser". This rule ought to be followed also in cases, where the purchase-money *exceeds* the amount mentioned in the warrant, credit being of course given for the poundage fee afterwards when the purchase-money is adjusted.

(*b*) REFUND OF POUNDAGE.

1. It has come to the notice of the High Court that refunds of poundage and process-service fees are sometimes treated as Judicial refunds, under 19-A., Law and Justice. Such refunds should be treated as refunds of Stamp Revenue and debited to "1. Refunds—Revenue Refunds—Stamps—Surplus Process Fees".

2. The High Court describes the form appended to this circular for adoption in all districts in refunding *poundage* and *process fees*. [A refund shall, in the first instance, be made from the permanent advance with the head ministerial officer and shall be recouped by means of contingent bills, headed "Refund of Process and Poundage Fees," drawn on the treasury at the end of the month.] The refund vouchers in the form now prescribed should be attached to the contingent bills even when they are for sums of Rs. 10 and less, and the vouchers should, on no account, be cancelled or destroyed as in the case of sub-vouchers for ordinary contingencies. The officer sanctioning refund should, at the time of signing the refund order, exercise the necessary check by comparing the voucher with the entries in the registers maintained in the Court.

3. When a refund has to be made after a process has been transmitted for service from one Court to another, the refund order should be forwarded to the Judge of the Court in which the process fees have been deposited with request that the amount of the refund may be paid from his permanent advance, instead of the order itself being made directly payable from the treasury.

4. When more than the amount required for the service of process is deposited, or when issue of process becomes unnecessary after deposit, the Courts are authorized to refund to the depositor the amount of the surplus fees in money and to charge the same to the contingent fund.

[1]II. THE MADRAS CITY CIVIL COURT.

Nature of process.	Amount leviable	
	In suits in which the value of the subject-matter in dispute does not exceed Rs. 1,000.	In all other suits.
	Rs. A. P.	Rs. A. P.
I. For each summons or notice		
(*a*) To a single defendant or witness ..	0 8 0	1 0 0
(*b*) To every additional defendant or witness residing in the same Municipal Division of the City of Madras if the process be applied for at the same time ..	0 4 0	0 8 0
II. For every warrant		
(*a*) Of arrest in respect of every person to be arrested.		
(*b*) Of attachment in respect of every such warrant.	1 0 0	2 0 0
(*c*) Of sale in respect of every such warrant.		
(*d*) Of delivery of possession in respect of every such warrant.		
With an additional fee for the services of every officer entrusted with the execution of the warrant for each day occupied in its execution after the third day beginning with the day on which the warrant was issued	0 4 0	0 6 0
III. For every proclamation, injunction or order	1 0 0	2 0 0
an additional fee being leviable after the third day as above	0 4 0	0 6 0
IV. For every process not otherwise provided for herein	0 8 0	1 0 0
V. In respect of sales, a fee by way of poundage on the purchase-money calculated at half anna in the rupee on the first five hundred rupees and quarter anna in the rupee on any additional sum above Rs. 500.		

Note. 1.—Any party may deposit the cost of proceeding by railway or any public conveyance, where such is available and in such case the process-server shall be bound to proceed by such railway or public conveyance and the cost so deposited shall be part of the costs of the cause.

Note 2.—For processes applied for and ordered to be executed as emergent, the fee will be the ordinary fee and half as much again.

All fee chargeable under this schedule shall be collected and dealt with in the same manner as fees chargeable under the Court-Fees Act of 1870.

[1] Notification No. 500, Judicial, dated 10th December, 1892, *Fort St. George Gazette*, Pt. I, p. 1553.

III. VILLAGE COURTS.

R. 57. [1] The following shall be the amount of fees leviable for the service of summons under section 27 of the Act upon defendants beyond the local jurisdiction of the Village Court, *viz.*:—

For each summons—

(*a*) to a single defendant .. .. 8 annas.

(*b*) to every additional defendant residing in the same village if the process be applied for at the same time .. 4 annas.

The following fees shall be leviable for summons under sections 25 and 40 of the Act which are served otherwise than by a village servant:—

(*i*) For every witness or defendant resident within the limits of the local jurisdiction of the Court .. .. 1 anna.

(*ii*) For every witness resident beyond the limits of the local jurisdiction of the Court .. .. 2 annas.

Notification No. 144 *Law, General, dated 28th February,* 1922. *See* Fort St. George Gazette, *dated 7th March,* 1922, *pp.* 256-262.

Note.—In cases where the witness resides outside the jurisdiction of the village Court issuing the summons or forwarding the interrogatory a fee of two annas will be levied under rule (*ii*) alone. If the village munsiff to whom the summons is directed or the interrogatory is forwarded has a special establishment for the service of processes, the fee for serving the summons or issuing a summons to a witness to whom the interrogatory is addressed will under rule (*i*) be one anna. *See* C. R. P. and C. O., Vol. I, p. 274.

In Yercaud.

In exercise of the powers conferred upon him by section 29 of the Madras Village Court Act, I of 1889, and in modification of Notification No. 179, dated 22nd April, 1893, published in the *Fort St. George Gazette,* dated 25th April, 1893, p. 455, Pt. I, amended by the *erratum* published at p. 528, Pt. I of the *Fort St. George Gazette,* dated 8th May, 1894, the Governor in Council is pleased to declare that the following fees shall be leviable for summonses issued in writing under sections 25 and 40 of the said Act which are served otherwise than by a village servant within the jurisdiction of the Village Munsif of Yercaud in the Salem district:—

(1) For every summons to a witness or defendant resident within the Yercaud Union .. .. 1 anna.

(2) (*a*) For every summons to a witness or defendant resident outside the Yercaud Union and within the jurisdiction of Village Munsif of Yercaud .. .. 2 annas.

(*b*) The fees for the execution of decrees shall be .. 8 annas.

(*c*) All fees must be paid in cash.

B.—RULES RELATING TO PROCESSES.

Issue of Summons or Notice.

49. [24] In any proceeding in which summons or notice is to be issued by the Court to any person, the party presenting the plaint, memorandum of appeal, cross-objection, or application shall also bring into Court along with it a duly stamped application for service together with a sufficient number of copies of the plaint, concise statement, memorandum of appeal,

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[1] Number in the consolidated rules under the Madras Village Courts Act issued by the Government in G.O. No. 572, Law (General), dated 2nd March, 1922.

cross-objection, or application and affidavit in support thereof for service on the party concerned along with the summons or notice.

The copies above referred to shall show the date of presentation of the original and the name of pleader, if any, who presented the same.

49-A. [24-A] (1) In districts to which the rule is made applicable by the High Court, in all cases where processes of the nature of summonses or notices have to be issued, the parties or their pleaders on whose behalf such summonses or notices are issued, shall file with their applications for the issue of processes, printed forms of process in duplicate legibly filled up. The date of appearance and the date of the process will be left blank.

(2) In the case of a summons the combined form as in Form No. 19 shall be used and the party or his pleader shall leave the portion relating to the purpose of the summons intact, leaving it to the Court, after it has determined the purpose for which the summons is to issue, to strike out the portions of the form which do not apply and thus convert the summons into one as per Form No. 1 or 1-A or 2 of Appendix B to the First Schedule to the Code of Civil Procedure.

(3) The parties or their pleaders shall sign the forms in the left bottom corner, and will be responsible for the accuracy of the entries.

(4) Where orders for the issue of process are passed by the Court the date fixed for appearance will be inserted in the form and the processes will be dated and signed by an officer of the Court duly authorized.

(5) The necessary number of printed forms of process will be supplied to the parties or their pleaders free of cost on application to such officer of the Court as the presiding Judge shall direct.

(6) The presiding officer may, in his discretion, direct in any particular case that the forms of process be entirely filled up in the office of the Court.

Note.—The parties may include the cost of preparation of processes which shall be calculated at the following rate:—

For preparation of original process, two annas each. For preparation of each duplicate process, half-an-anna each, subject to a minimum fee of four annas in each suit. (Notification dated 10th February, 1931, *Gazette*, Pt. II, pp. 177 and 178 amending Rule 96 (1) of the Civil Rules of Practice and Circular Orders.)

Summonses to Witnesses.

50. [74] (1) A party who desires the attendance of any witness before the Court, or a Commissioner appointed to take evidence, shall bring into Court, a list in Form No. 20, of the persons whose attendance he requires, stating the full name, residence, and description, of each person and whether he is required to give evidence as an expert or otherwise or to produce any document, and in the latter case, specifying the date, if any, and description of the document, so as to identify it; and shall with such lists deposit in Court the prescribed fees for service of summons, and the total amount of the allowances to which the said persons are entitled for travelling, attendance at the Court and, in the case of an expert or scientific witness qualifying to give evidence.

[75] (2) The said allowances shall be calculated according to the scale set out below.

(3) Scale of allowances to ordinary witnesses:—

Class of witnesses.	Travelling allowances.				Allowance for subsistence and other expenses not exceeding, per diem.
	By rail.	By public motor service.	By road.	By sea or canal.	Rs. A.
1st class.	First-class fare.	First-class fare.	8 annas per mile.	Actual expense of passage.	4 8
2nd class.	Second-class fare.	Second-class fare, if where there are only two classes, the higher class fare.	4 annas per mile.	Do.	3 0
3rd class.	Intermediate, or if there be no intermediate, 3rd class fare.	The lower or lowest class fare.	2 annas per mile.	Do.	1 8
4th class.	Third-class fare.	Do.	2 annas for every 10 miles, or if witness is unable to walk, 1 anna per mile.	Do.	0 12

NOTE.—In calculating travelling allowance by road for distances exceeding ten miles, fractions of the ten mile-unit less than five miles are to be neglected while distances of five miles and above may be treated as equivalent to the unit of ten miles.

(4) There shall be allowed such fees not less than Rs. 10 or more than Rs. 100 as the Court may fix for qualifying to give evidence, and such fees not less than Rs. 10 or more than Rs. 30 per diem as the Court may fix for attending the trial or hearing, provided that the witness is also entitled to the travelling allowances prescribed for ordinary witnesses of his class.

Return of Service of Process.

51. [25] (1) The return of the serving officer shall state the manner in which the process was served and the place, day, and months of service, and also whether he is personally acquainted with the person served, and if not, by whom such person was identified.

(2) If the person to be served refuses to sign the acknowledgment of service, the return shall state that he was informed of the nature and contents of the process, and, in the case of a plaint, that, upon applying to the officer of the Court, he could obtain a copy, or concise statement of the contents of the plaint.

52. [26] (1) The return of service shall be verified by the affidavit of the serving officer; and all nazirs, deputy nazirs and assistant nazirs are hereby empowered to administer the oath to, and to take the affirmation of, any process-server.

(2) If the process-server is not personally acquainted with the person to be served, the return shall be[1] supported by a verification at the foot thereof made and signed either by a village officer or by a respectable person who identifies him; and in the latter case the full name and address of such person shall be set out in the verification.

53. [27] If a process is affixed to the outer door of a house, in the absence of the person to be served, the serving officer shall make an affidavit as to following matters:—

(1) The number of times and the dates and hours at which he went to the house;

(2) the attempts made by him to find the person to be served;

(3) whether he had any, and what, reason to suppose that such person was within the house or its neighbourhood, or endeavouring to evade service;

(4) whether any adult male member of the family of the person to be served was residing with him.

54. [28] If a summons to a plaint is affixed to the outer door of a house, the serving officer shall affix therewith a notice that the defendant can, upon application to the officer of the Court, obtain a copy or a concise statement of the contents of the plaint and shall in his return state that he has done so and shall return the plaint or concise statement to the Court. If the summons has been sent by another Court for service and the defendant does not, within fourteen days from the affixing of the summons, apply for the said copy, it shall be returned to the said Court.

Translation of Process.

55. [29] When a process is written in a vernacular different from that of the district in which it is to be served, the Court transmitting it for service shall also send a translation thereof in English and in cases in which the process has to be returned to any Court outside the Presidency of Madras and the return is not in English or in the language of that Court, the proceedings in Form 10, Appendix B, Schedule I, Code of Civil Procedure, with which it is sent back to that Court shall be accompanied by a translation of the return into English.

Address for Service.

56. [29-A] (1) Every party who intends to appear and defend any suit, appeal or original petition, shall, before the date fixed in the summons or notice served on him as the date of hearing, file in Court a proceeding stating his address for service.

(2) Such address for service shall be within the local limits of the Court in which the suit, appeal or petition is filed, or of the District Court in which the party ordinarily resides.

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[1] Notification dated 30th May, 1928, *Fort St. George Gazette*, Pt. II, p. 857.

(3) Where any party fails to file an address for service, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution. and if a defendant, be liable to have his defence, if any, struck out, and to be placed in the same position as if he had not defended; and any party may apply for an order to that effect, and the Court may make such order as it thinks just.

(4) Where a party is not found at the address given by him for service and no agent or adult male member of his family on whom a notice or process can be served is present, a copy of the notice or process shall be affixed to the outer door of the house and such service shall be deemed to be as effectual as if the notice or process had been personally served.

(5) Where a party engages a pleader, notices or processes for service on him shall be served in the manner prescribed by Order 3, Rule 5 of the Code unless the Court directs service at the address for service given by the party.

(6) A party who desires to change the address for service given by him as aforesaid shall file a verified petition and the Court may direct the amendment of the record accordingly. Notice of every such petition shall be given to all the other parties to the suit.

(7) Nothing in this rule shall prevent the Court-fee directing to service of a notice or process in any other manner, if for any reasons it thinks fit to do so.

(8) Nothing contained in this rule shall apply to the notice prescribed by Order 21, Rule 22, C. P. Code (Act V of 1908).

C.—SERVICE OF PROCESSES.

The following rules,[1] under section 20 of the Court-Fees Act, No. VII of 1870, for the service and execution of processes issued by the Civil Courts outside the Presidency Town in the Madras Presidency, have received the sanction of the Governor-General in Council:—

I. *Central Nazarats.*—There shall be one general establishment of amins and peons for the execution and service of processes issued by all the Civil Courts at the following stations and at such other places as the High Court may hereafter direct:—Vellore, Cuddalore, Chingleput, Chittoor, Coimbatore, Cuddapah, Berhampore, Cocanada, Rajahmundry, Ellore, Guntur, Bapatla, Mangalore, Bezwada, Masulipatam, Dindigul, Madura, Tellicherry, Calicut, Ottapalam, Palghat, Nellore, Sivaganga, Salem, Mayavaram, Negapatam, Tiruvalur, Kumbakonam, Tanjore, Tinnevelly, Tuticorin, Trichinopoly and Vizagapatam.

Such establishment shall be under the immediate direction of a Central Nazir and the control of the District Judge; or of the Sub-Judge in the event of a Central Nazarat being established at any station where there is no District Judge.

II. *Deputy Nazir at outlying stations.*—At all other stations the process establishment shall be under the immediate direction of a Deputy Nazir who shall be under the control of the District Munsif having jurisdiction at such station.

[Omitted.]

V. *Officers to whom processes should be transmitted for service.*—The proper officer to whom processes shall be transmitted for service under

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[1] Judicial Notification No. 42, dated 29th January, 1884, published at pp. 111 to 114 of Pt. I, *Fort St. George Gazette*, dated 19th February, 1884.

section 72 of the Code of Civil Procedure, 1882 (Order 5, Rule 9 of the Code of 1908) shall be:—

(*a*) The *Central Nazir* in respect of all processes issued by any Court located or having jurisdiction at a station where there is a Central Nazir, for service within the jurisdiction of a Munsif located at such a station.

(*b*) The *Deputy Nazir*, at stations where there is no Central Nazir, and in respect of processes issued by any superior Court for service within the jurisdiction of an outlying Munsif.

VI. *Presentation of application for issue of process and procedure thereafter.*—(1) All applications for the issue of processes except those for the issue of emergent processes whether money is deposited with them or not, [1]and except those (accompanied with processes prepared or not) presented along with the plaint, memorandum of appeal, cross-objections or application to the Chief Ministerial Officer, shall be presented to the Central or Deputy Nazir, who shall enter them in a register in the form prescribed. Where money is deposited it shall be paid to the Central or Deputy Nazir who shall grant a receipt to the party, out of his receipt book, in the form prescribed (*vide* Civil Register No. 51). He shall maintain as many receipt books and as many registers as there are Courts whose processes are served by him.

(2) The application shall next be entered in a register in the form prescribed (*vide* Civil Register No. 53-A) and forwarded to the clerk in charge of the records of the suit or proceeding to which the process applications relate who shall return them with the copies of plaints, etc., if any, to be delivered to the defendants and such records as may be necessary for the correct preparation of processes. The process writer shall then prepare the processes in the order of receipt of applications and return the records when no longer required to the record clerk and obtain his acknowledgment.

(3) Where the High Court from time to time directs that the preparation of processes issuing from any specified Court shall be under the supervision of the Chief Ministerial Officer of the Court instead of under the Central or Deputy Nazir, the Central or Deputy Nazir shall, after entering in his register applications relating to the issue of such processes, transmit them daily at 3 P.M. or such hour as the District Judge may fix to the Chief Ministerial Officer of the Court concerned with Register C (*vide* Civil Register No. 53-A). The Chief Ministerial Officer shall return them with the copies of processes daily at 1 P.M. or such hour as the District Judge may fix to the Central or Deputy Nazir for service.

(4) *Emergent processes.*—Applications for the issue of emergent processes shall be made direct to the Court concerned, and the Court ordering the issue of such processes may direct one of its own officers to receive the process memos, direct from the party or his pleader. The processes shall then be prepared urgently under the supervision of the Chief Ministerial Officer of that Court, and the process memos with the processes shall then be transmitted urgently to the Central or Deputy Nazir for entry in his B Register (*vide* Civil Register No. 53) and emergent execution of the processes.

Instructions for the guidance of Central and Deputy Nazirs.

The Process Service Rules having been amended so as to make the Central or Deputy Nazir solely responsible for the transactions connected with the receipt, preparation, service and return of the processes issued by

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[1] Added by R. O. C. No. 2163 of 1928. C. L. Notification, dated 11th September, 1928, *Fort St. George Gazette*, Pt. II, pp. 1352-1353.

Civil Courts, the High Court hereby issues the following instructions for their guidance:—

1. All papers presented to the Central or Deputy Nazir under the revised rules shall immediately on receipt be impressed with a date stamp which may be of a design different from that of the date stamp used by the Chief Ministerial Officer. Date stamps may be obtained on indent from the Superintendents, Government Press.

2. * * * * *

3. The Central or Deputy Nazir shall sign the processes now signed by the Chief Ministerial Officer and affix to the processes so signed a duplicate Court seal with the word "Nazarat" inscribed thereon, which will be supplied to him for the purpose.

4. The presiding officer of the Court shall send money orders relating to the service of processes received by him to the Central or Deputy Nazir, instead of to the Chief Ministerial Officer. The Central or Deputy Nazir shall make a note of the particulars relating to the money orders in his register.

5. A notice showing the unexpended witness batta available for refund and directing parties and pleaders concerned to apply for refund on such two days in each week and at such hours as the Court may in its discretion fix with due regard to the convenience of all parties, shall be exhibited on the notice board of the Court daily. In cases where the party or his pleader has failed to obtain a refund of the unexpected witness batta within the time prescribed in rule 170 and where the same has had to be remitted to the Treasury, a penalty of one anna per half rupee or fraction thereof shall be imposed upon the party in the event of his applying for refund at a later date.

[1] (5) Applications for issue of process accompanied in the process prepared or not presented along with the plaint, memorandum of appeal, cross-objection or application shall after the plaint, memorandum of appeal or cross-objection or application has been admitted, be transmitted to the Central or Deputy Nazir who will enter them in the B Register (Civil Register No. 53).

VII. *Intimation of receipts and disbursements in the Nazarat to the Chief Ministerial Officer.*—As soon as possible after 3 P.M. or such hour as the District Judge may fix, the Central or Deputy Nazir shall send to the Chief Ministerial Officer the receipt books and a statement of the totals of stamps and all amounts received and of money expended during the day, in order that the necessary entries may be made in the cash book, ledger and register of documents and Court-fees.

VIII. *Lists of processes for service in other Nazarats.*—One hour before the post time for each outlying Munsif's station, the Central or Deputy Nazir of each Court shall prepare lists from his registers of all processes to be served or executed within the jurisdiction of outlying Munsifs and such lists shall forthwith be sent by post on His Majesty's Service to Deputy Nazirs together with all such processes.

IX. *Procedure on receipt of processes for service.*—On receiving any batch of processes, the Central or Deputy Nazir, as the case may be, shall give them general numbers and enter them in a register which will be kept by himself or under his superintendence in the Form B, annexed hereto (*vide* Civil Register No. 53).

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[1] G. O. No. 2865 Mis. Law (General), Notification, dated 11th February, 1928, *Fort St. George Gazette*, Pt. II, pp. 1352-1353.

X. *C Roster.*—He shall thereupon arrange for the distribution of the processes, and, after the necessary entries have been made in the Roster C (Form C, hereto annexed, *vide* Civil Register No. 54) shall deliver them to the several process-servers. As far as possible all proceses, other than warrants of arrest, for persons residing in the same neighbourhood, shall be served by one process-server and not by several, whether issued by the same or by different Courts.

XI. *List of processes executed.*—Every day at such hours as the District Judge may fix, having regard (when necessary) to the hours at which the post closes, each Central or Deputy Nazir shall prepare a list for each Court of the processes to be returned to it, giving them their original Court numbers and shall transmit them with the list to the Central or Deputy Nazir who issued the processes, and the latter shall thereon sign and return the list. (Substituted by Notification, dated 4th October, 1918.)

XII. *Delay in return of processes to be reported.*—It shall be the duty of the Central or Deputy Nazir to have the processes returned struck off in his register and to bring to the notice of the presiding Judge, any unusual delay. Where such Judge is not the District Judge, he shall report such delay to the District Judge in the absence of satisfactory explanation. (Substituted by Notification, dated 4th October, 1918.)

XIII. *Nazir's B Register.*—At the close of each day, every Central and Deputy Nazir shall enter in the Register B the number of processes distributed during the day and the number of peons remaining unemployed after the distribution.

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XV. *Procedure in case of arrest or seizure of moveable property.*—When any person has been arrested, or moveable property seized, by a process-server of an outlying Court under a warrant issued by a superior Court, the process-server shall forthwith bring such person or property to the station of such Court and deliver him or it to the Central or Deputy Nazir, as the case may be, provided that this rule shall not apply to property not required to be brought to the Court-house.

Such Central or Deputy Nazir shall immediately give the process-server a receipt and send him back to his own Court, and shall produce such person or property before the Court which issued the process.

When money shall have been paid upon any such process, it shall be received by the outlying Munsif and duly transmitted (by money order at the expense of the party to whom the money is payable) together with the process, to the Court concerned.

It should be distinctly understood both by process-servers and Vakils that payment by them of money to a head clerk will not relieve them of responsibility. Nothing short of payment into Treasury under a chellan or an acquittance signed by the presiding Judge himself can be recognized as an absolute discharge.

XVI. *Remittance of witness batta.*—The total amount of the batta of witnesses, etc., on all the processes issuing to a given Court on any day for service shall be remitted by money order by the Court issuing the processes to the Court to which the processes are sent for service at the same time as the processes are despatched to the latter Court. Any unspent balance in the hands of the Court serving the processes shall be returned to the Court issuing the processes by money order at intervals of a week (but it may be remitted along with witness batta if such is being remitted at an earlier date); the money order commission in the above cases shall be charged in the contingent bill of the Courts.

XVII. *Statement of money orders issued to other Courts.*—On or before the 6th of each month, the Court issuing money orders under the

preceding rule shall send to each Court to which money orders have been issued in the preceding month a statement showing the number and particulars of the money orders so issued; and it shall be the duty of the presiding officer of the latter Court to see that the amount involved have been received and accounted for.

XVIII. *Emergent processes.*—The presiding Judge of any Court may, for any sufficient reason, at any hour of the day, transmit a process for emergent execution within the jurisdiction of the head-quarter Munsiff, and it shall be the duty of the Central or Deputy Nazir (as the case may be) on receiving such process signed by the Judge, to make immediate arrangements accordingly.

In a case of very special urgency, the presiding Judge may deliver any such process to one of the process-servers in attendance on his Court for immediate service or execution.

XIX. *Execution thereof not to be delayed.*—The Deputy Nazirs of outlying Courts shall, on no account, delay any process which may be signed by a presiding Judge as emergent. All other processes it shall be lawful for them to keep back for any period, not exceeding three days, which may be necessary to admit of a sufficient number accumulating for a particular neighbourhood.

XX. *Deputation of special process-server from headquarters.*—The presiding Judge of any superior Court may direct, on the application of the party applying for any particular process which would ordinarily be sent for service to an outlying Court, that it be served or executed by a special process-server from headquarters, provided that the pay of such process-server at the rate of 8 annas a day for a peon or one rupee a day for an amin, for the time he is likely to be employed on such duty be paid in advance; and the Judge may, for any sufficient reason, direct that such extra charge be costs of the suit or proceeding.

XXI. *Second peon to be ordinarily deputed to guard judgment-debtors.*—When the Court considers it advisable that a second peon should be deputed to assist the peon having the custody of a judgment-debtor, the pay of both at 8 annas a day for each up to the time fixed for the adjourned hearing should be paid in advance.

Payments under this and the preceding rule shall be made in Court-fee stamps.

XXII. (1) *Average number of processes to be executed by amins and process-servers—Districtwar.*—The number of amins and peons to be employed shall, from time to time, be determined by the High Court for each district with due regard to the number of processes to be executed and the areas to be served by the several Nazarats and any other special circumstances affecting the number of processes which one officer may fairly be expected to serve in a given time. For the present the number of processes to be executed each year by each amin and peon engaged in execution work shall not be less than is shown in the following scale:—

(2) *Deputation of process staff for process writing and guard duty.*—The number of amins and peons to be employed under each Nazir and Deputy Nazir, not exceeding the number determined as above for each district shall in like manner, from time to time, be determined by the District Judge subject to the control of the High Court. In addition to the number of amins and peons required for execution work there shall be employed for each Court a sufficient number of amins to write its processes and three peons to guard and keep order in the Court.

The peons engaged on guard duty shall be told off in rotation for ten days at a time from the whole number of peons and shall also be available for the service of emergent processes under Rule XVIII.

(3) *Computation of processes.*—In calculating the number of processes, if more than one of the same description have been issued on behalf of the same party at the same time in the same suit or proceeding and executed in the same town or village, the first only shall be reckoned as a full process, and each subsequent set of three or part thereof shall count as but one process, whether executed by one or more amins or peons. Three processes will be counted for each emergent process and one for each day that an amin or peon is in charge of a judgment-debtor or engaged on any special duty.

XXIII. (1) *Monthly report of processes executed.*—Every Central or Deputy Nazir shall, at the end of each month, report to the District Judge the number of processes, calculated as above, which may have been executed by their subordinates within the month; and such report shall show the number declared by each Court to be emergent.

(2) *Strength of Nazarat to be reduced whenever the average number of processes falls short of the minimum.*—The District Judge shall reduce the number of peons in the Central Nazarat, or any outlying Court, whenever the average number of processes for each man (exclusive of those allowed under Rule XXII to be in attendance in the Courts) falls short of the prescribed minimum by more than ten *per centum*: provided that, if sufficient cause appears for lowering the minimum, he may report the matter for the orders of the High Court.

B.—CRIMINAL COURTS.

I. PROCESSES.

Relevant rules from the Criminal Rules of Practice and Orders.

SUMMONS.

6. Summonses issued to witness and jurors from a Magistrate's Court shall ordinarily be signed by the Chief Ministerial Officer of the Court.

The words "By order of the Court" shall invariably be prefixed to the signature of the Ministerial Officer in such cases.

7. Magistrates should themselves sign summonses to accused persons.

8. Every summons and every adjournment shall state the place in which the case to which it relates will be heard.

SUMMONSES AND WARRANTS.

9. In all summonses issued by the Criminal Courts in the vernacular languages, the plural form of the pronoun shall be used in addressing the persons summoned.

10. The practice of using *facsimile* stamps for signing warrants or summons is prohibited. All warrants should receive the sign manual of the Judge or Magistrate from whose Court they are issued.

11. When the District Magistrate is absent from headquarters he may leave blank forms of summons to a juror, ready sealed, in the custody of the Chief Ministerial Officer of his Court who will be responsible for them.

12. Summonses to medical subordinates in the mofussil which do not involve their leaving the station should be sent to them direct and not through the District Medical Officer. (G. O. No. 462, dated 5th November, 1924, Dis. No. 2082 of 1924.)

Criminal Courts issuing summonses for the attendance of officials of the Ceylon Government as witnesses under section 15 of the Fugitive Offenders Act, 1881 (44 and 45 Vict., c. 69), shall forward a copy of every summons to the Hon'ble the Colonial Secretary to the Government of

Ceylon with a covering letter leaving the legal service on the officials to be effected as provided for in the Act. The summons should allow sufficient time to enable the Ceylon Government to decide whether the officials could be spared at the time specified, and, if not, to ask the Court to fix a more convenient date. (G. O. No. 1481, Home (Judicial), dated the 19th July, 1917.) (H. C. Dis. No. 1585 of 1917.)

When the production before a Criminal Court of this Presidency of a document in the custody of a Court or of a judicial officer in the French settlements in India is considered necessary, the usual form of summons addressed direct to the officer concerned should not be issued but a letter of request embodying the necessary details should be forwarded to His Excellency the Governor of the French Settlements in India through the Special Agent, South Arcot.

The practice of addressing summonses issued to secure the appearance of Indian witnesses from French territory to the "Judges de Prax" of the French Colonies may continue, but the minatory clause should be removed from the form of summonses before issue. (G. O. No. 285, Judicial, dated 7th February, 1914.) (H. C. Dis. No. 315 of 1914.)

II. FEES FOR SERVICE OF PROCESS.

[364] All payments for the service of processes by the Criminal Courts in the mufassil subordinate to the High Court, in the case of offences triable by summons case procedure, other than offences for which the Police may arrest without warrant, shall be collected according to the rates fixed in the subjoined schedule:—

Schedule—Criminal Courts.

(1) Summons to defendant	Re.	0	8	0
And for every additional defendant, if applied for at the same time and if resident in the same neighbourhood ..	Re.	0	4	0
(2) Summons to a witness	Re.	0	8	0
And for every additional witness, if applied for at the same time and if witness resides in the same neighbourhood.	Re.	0	4	0
(3) Warrant of arrest	Re.	0	12	0
(4) Notice (including notice to parties in revision petitions and other applications), order, injunction or warrant, not otherwise provided for	Re.	0	8	0

(1) If a process is to be served or executed within a radius of six miles from the Court-house, half the above rates only shall be charged. The Judge of every Court shall determine what villages are within the above radius, and a list of such villages shall be notified in a conspicuous place in the Court-house.

(2) When a warrant remains unexecuted for 15 days after its delivery to the officer entrusted with its execution, an additional fee at the same rate shall be levied from the party, at whose instance the warrant was issued for every 15 days or portion of 15 days until return is made, provided that the delay in executing the said warrant is not attributable to the officer of the Court.

(3) This shall not apply to warrants issued under Planters Labour Act (Madras Act I of 1903) and forwarded to an officer of the Labour Department of the United Planters' Association of Southern India under the terms of G. O. No. 101, Judicial, dated the 12th January, 1916, and G. O. No. 1074, Home (Miscellaneous), dated the 21st September, 1917, as modified from time to time. The above para. under sub-rule (2) was added by Dis. No. 1307 of 1918.

(4) This rule applies only to proceedings in non-cognizable cases whether these be calendar cases, appeals or revision cases. No fees for service of processes should be levied in Criminal Revision Petitions in cognizable cases. (High Court Circular Dis. No. 690 of 1926.)

Note.—A non-cognizable offence dealt with jointly with a cognizable offence in a single proceeding is a cognizable offence within the meaning of the rule.

[365.] No fees shall be levied on processes issued upon complaints by public servants or officers or servants of a Railway Company acting in their official capacity, which under section 19, clause (*xviii*) of Court-Fees Act, 1870, are exempt from complaint fees.

Notification No. 27, dated 15th January, 1890, published at p. 54 of Pt. I of the *Fort St. George Gazette,* dated 21st January, 1890:—

The Government agree with the Board of Revenue in considering that a Review petition presented to a Criminal Court by a servant of the Railway Company and the copy of the lower Court's judgment enclosed therewith should be stamped under the Court-Fees Act—*vide* G. O. No. 1442, Revenue, dated 8th June, 1907.

The rules provide for the levy of fees only in cases of non-cognizable offences, and there is no authority for the levy of fees in case of cognizable offences.

Article 4 of the schedule appended to the said rules covers all notices not provided for in the other articles of the schedule, and includes notices in applications for transfer of criminal cases under section 528 and in those for revision under section 440 of the Code, for which, therefore, when they are issued in connection with non-cognizable offences, fees may be levied.

The fee of 12 annas for a warrant of arrest issued under Act XIII of 1859 is leviable in cases in which warrants are executed by British authorities and cases in which they are executed in Mysore lie outside the scope of clause 11, section 20 of Act VII of 1870. The last mentioned class of cases is governed by the arrangement made by the British Government with the Mysore Government and, in the opinion of the High Court, the fee leviable under the Court-Fees Act cannot be collected in these cases by reason of duty of providing escort which falls upon the British Police. The charge of 12 annas in these cases should be discontinued.—(H. C. Pros., 1st May, 1891, No. 1913.) Act XIII of 1859 is the Workman's Breach of Contract Act, 1859.

[366.] Subject to the provisions hereinafter contained, the expenses of witnesses will be paid on behalf of Government in the following classes of cases, *viz.*:—

(*a*) Cases shown in the Second Schedule of the Code of Criminal Procedure as not bailable.

(*b*) Cases in which the prosecution is instituted or carried on under the orders or with the sanction of the Governor in Council or of any public servant acting as such.

(*c*) Where the witness in question has been compelled to attend by a process issued under section 540 of the Code.

(*d*) Cases in which the Court certifies that the attendance of such witness was directly in furtherance of the interest of public justice.

[367.] For the purposes of these rules, Europeans, Anglo-Indians and Indians shall be divided into three classes and the Magistrate before whom they are required to appear, or, in the case of witnesses from the mufassal, the Magistrate of the district from which they come, shall fix the class with due regard to the station in life of each individual.

[368.] The following are the maximum rate which may be awarded to the several classes of witnesses and no expenses in excess of, or other than, those here provided for, shall be allowed:—

Witness.	Class.	Subsistence allowance.	Carriage hire allowable for days of actual attendence.	Travelling expenses if any incurred.			
				By Rail.	By a public motor service.	By road otherwise than by public motor service.	By sea or canal.
Europeans and Eurasians	1st Class	Rs. 5 per day.	Rs. 3 per day.	1st class fare.	1st class fare.	As. 8 per mile.	Actual expenses of passage.
	2nd ,,	Rs. 3 per day.	Rs. 2 per day.	2nd class fare.	2nd class fare.	As. 6 per mile.	
	3rd ,,	Rs. 1-8-0 per day.	Re. 1 per day.	3rd class fare.	3rd class fare.	As. 4 per mile.	
Indians	1st ,,	Rs. 2 per day.	Rs. 2 per day.	1st class fare.	1st class fare.	As. 6 per mile.	
	2nd ,,	Re. 1 per day.	Re. 1 per day.	2nd class fare.	2nd class fare.	As. 2 per mile.	
	3rd ,,	As. 5 per day.	Nil.	3rd class fare.	3rd class fare.	As. 2 per 10 miles.	

The rates mentioned in the above table are those revised by the High Court in Dis. No. 927 of 1917. Even now the rule does not expressly state the allowance and batta that have to be given to a witness residing in the city for his attendance in Court.

If there are only two classes, the first and second class witnesses will be paid higher class fare and third class witnesses the lower class fare.

C.—HIGH COURT (APPELLATE SIDE).

Rules framed under S. 20 of the Court-Fees Act and came into force on 1st July, 1884 (G. Os. Nos. 1050 and 1486, Judicial, dated 30th April and 16th June, 1884, respectively).

61. The following fees shall be chargeable for serving and executing processes issued by the High Court of Madras in its Appellate Jurisdiction:—

Nature of Process.	Amount leviable. Rs. A. P.
For each summons or notice—	
(*a*) to a single respondent or witness.. ..	1 0 0
(*b*) to every additional respondent or witness residing in the same village, if the processes be applied for at the same time	0 8 0
(*c*) for each injunction order and every process not expressly provided for	2 0 0
(*d*) for urgent process the fee will be the ordinary fee and half as much again.	

Note 1.—If notice is served on a single pleader or on behalf of several respondents or on a single guardian on behalf of several minors a single fee is leviable.—(Notification, dated 18th August, 1931, *Fort St. George Gazette*, Pt. II, p. 1428.)

Note 2.—Scale of process fees levied for services of process in French territory.

The following circular (Dis. No. 2424, dated 23rd December, 1916) issued by the High Court regulates the fees payable for service of processes on persons residing in French territory and has effect from the 1st day of January, 1917:—

A uniform fee of four annas (the equivalent of two French fanams) shall be levied towards the cost of service for each summons to be served. Parties at whose instance processes are issued for service in the French territory shall be called on to pre-pay this fee.

62. Whenever in an appeal from the moffusal a respondent who is to be served with notice resides within the local limits of the original jurisdiction of the High Court, service of notice shall be effected through the Sheriff of Madras, the fees payable in respect of such process being the same as those prescribed in Rule 61.

62-A. In any appeal, petition, case referred or other matter filed in the High Court before the disposal of the main proceedings in the lower Court, notice shall be served on the pleader who represents the party in the main proceedings in the lower Court and such service shall be deemed to be sufficient service on the party who is represented by such pleader. In cases, however, where the parties are not represented by a pleader in the main proceedings, the notice shall be served on the party direct. (Dis. No. 278 of 1928, dated 9th March, 1928.)

63. The fees for the service of notices on respondents shall be paid in the form of Court-fee labels, and the Court-fee labels shall be attached to a memorandum in Form No. I of Appendix IV (A. S. Rules).

64. When an appellant or his pleader has failed to pay into the Registrar's Office within the prescribed periods the fees required for the service of notices on the respondent, the appeal or appeals shall be posted for the orders of the Court.

NOTIFICATIONS BY THE BOARD OF REVENUE UNDER THE COURT-FEES ACT (VII OF 1870).

The following rule framed by the Board of Revenue in exercise of the power conferred by the Court-Fees Act, section 23, and approved by the Governor of Fort St. George in Council and the Governor-General in Council, is notified for general information:—

The number of process-servers fixed by the District Collector for his own office and the offices subordinate to him shall be so fixed that the cost of the establishment may be at least covered by the amount of fees levied on the processes served and executed by them. It shall be reported to the Board of Revenue in the first instance for confirmation, and shall be altered from time to time as they may direct, and it shall not be increased without their sanction; but the Collector shall have power to transfer process-servers from one office to another within his jurisdiction as experience may dictate, and, when convenience requires that process issued by one officer shall be served by the process-servers attached to another, they may be served accordingly. (*Fort St. George Gazette*, 1873, p. 1257.)

RULES FRAMED BY THE GOVERNMENT OF MADRAS REGARDING PROCESS-SERVICE FEES.

108. The Government of India having directed that all collections for the service of processes shall be made by means of stamps, the following rules were issued by the High Court:—

(*i*) All collections shall be made by Court-fee labels to be affixed to the application for the issue of process. Such labels will be punched immediately on receipt by the officer appointed to receive the application who will endorse a note on the process that the proper fee for the issue thereof has been levied. In the event of the process not being issued the value of the stamps deposited should be refunded in cash to the depositor. (Proceedings of the High Court, No. 840, 22nd April, 1873. Board's Proceedings No. 354, Mis., 26th January, 1894. Board's Proceedings No. 2145, Mis., 24th October, 1904.)

(*ii*) In every case in which application is made to a Court for the issue of process beyond the jurisdiction of the Court, there shall be levied the fee that would be leviable for the issue of such process in the Court to which the application is made.

(*iii*) When process is forwarded by any Court in British India, or in the State of Mysore, to a Court subordinate to this Court (High Court) for execution, such Subordinate Court shall accept the certificate endorsed on the process as sufficient proof that the proper fee for the issue thereof has been paid, and shall deliver such process to the proper officer for service, and shall re-transmit the process to the Court by which such process was transmitted to it, with a return in the Form No. 10 of Appendix B to the Civil Procedure Code (Act V of 1908), and with the endorsement of the process-server, showing if service has been effected, in what manner it has been effected; and if service has not been effected the reason why it has not been effected, and such endorsement shall be verified by oath or affirmation of the process-server. (*Fort St. George Gazette,* 1882, Pt. I, p. 225.)

(*iv*) No fees shall be levied on processes issued upon complaints by public servants or officer or servants of a Railway Company acting in their official capacity, as under section 19, clause (*xviii*) of the Court-Fees Act, 1870, these are exempt from complaint fees.

(*v*) Processes issued under the Revenue Recovery Act, Madras, No. II of 1864, have been specially excluded from the list of processes which require to be stamped under the Court-Fees Act.

(*vi*) For the schedules of fees chargeable for serving and executing processes issued by Civil, Revenue and Criminal Courts, *see* pp. 221-222 of the Madras Stamp Manual, Vol. I.

VIII.—PATNA HIGH COURT.

CIVIL.

Rules framed by the High Court under clause (i) *of section* 20 *of the Court-Fees Act,* 1870, *declaring the fees chargeable for the service and execution of processes issued by the Civil and Revenue Courts.*

1. The fees in the following tables shall be charged for serving and executing the several processes against which they are respectively ranged:—

NATUR OF PROCESS.	Table of fees.		
	1. In Courts of District Judges. 2. In Courts of Subordinate Judges. 3. In Courts of Munsifs and Revenue Courts where the suit in which process is issued is valued at over Rs. 1,000.	In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit in which process is issued does not exceed Rs. 1,000 and exceeds Rs. 50 in value.	In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit does not exceed Rs. 50 in value.
1	2	3	4
	Rs. A. P.	Rs. A. P.	Rs. A. P.
Article 1.—In every case in which personal or substituted service of any process on parties to the cause is required, where not more than four persons are to be served with the same document—*one fee.*	4 8 0	1 8 0	0 12 0
When such persons are more than four in number, then the fee above-mentioned and an additional fee as mentioned in the table for every such person in excess of four.	0 12 0	0 6 0	0 6 0
Article 2.—In every case falling within columns 2 and 3 in which personal or substituted service of any process on any persons who are not parties is required, when the number of such persons is not more than four—*one fee.*	4 8 0	1 8 0	....
When there are more than four such persons, then the fees above-mentioned for the first four and an additional fee as mentioned in the table for every one in excess of that number.	0 12 0	0 6 0	....
In every case falling within column 4 in respect of a similar process for each person.	....	....	0 6 0
Article 3.—Where process of attachment of property by actual seizure is issued—			

NATURE OF PROCESS.	Table of fees.		
	1. In Courts of District Judges. 2. In Courts of Subordinate Judges. 3. In Courts of Munsifs and Revenue Courts where the suit in which process is issued is valued at over Rs. 1,000.	In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit in which process is issued does not exceed Rs. 1,000 and exceeds Rs. 50 in value.	In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit does not exceed Rs. 50 in value.
1	2	3	4
	Rs. A. P.	Rs. A. P.	Rr. A. P.
(*a*) for the seizure under the order of attachment.	4 8 0	1 8 0	0 12 0
(*b*) for each man necessary to ensure safe custody of property so attached when such man is actually in possession, per diem.	0 9 0	0 6 0	0 6 0
Article 4.—For the proclamation and publication of any order of prohibition under Order XXI, Rule 54 of the Code of Civil Procedure, irrespective of the number of such proclamations or publications.	4 8 0	1 8 0	1 8 0
Article 5.—For the publication by posting of a copy or copies of the notification of any proceeding or process not specially mentioned in any article, irrespective of the number of such publications.	3 0 0	1 8 0	1 8 0
Article 6.—For executing a decree by the arrest of the person or for executing a warrant of arrest before judgment.	15 0 0	6 0 0	1 8 0
Article 7.—Where an order for the sale of property other than an order for the sale of distrained property under Act VIII of 1885 is issued—			
(*a*) for proclaiming the order of sale under Order XXI, rule 66 of the Code of Civil Procedure, a fee of—	3 0 0	1 8 0	1 8 0

NATURE OF PROCESS.	Table of fees		
	1. In Courts of District Judges. 2. In Courts of Subordinate Judges. 3. In Courts of Munsifs and Revenue Courts where the suit in which process is issued at over Rs. 1,000.	In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit in which process is issued does not exceed Rs. 1,000 and exceeds Rs. 50 in value.	In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit does not exceed Rs. 50 in value.
1	2	3	4
	Rs. A. P.	Rs. A. P.	Rs. A. P.
(*b*) for selling the property, a percentage or poundage on the gross amount realized by the sale up to Rs. 1,000 at the rate of—	2 0 0 per cent.	2 0 0 per cent.	2 0 0 per cent.
together with a further fee on all excess of gross proceeds beyond Rs. 1,000, at the rate of—	1 0 0 per cent.	1 0 0 per cent.	1 0 0 per cent.
Article 8.—For service of any process not specified in any preceding article.	3 0 0	1 8 0	1 8 0

Note.—(1) When the process of attachment mentioned in Article 3 is issued in a number of cases relating to the same or neighbouring villages, the fee (*a*) must be paid in each case, the daily fee (*b*) only for the men actually employed.

(2) The daily fee (*b*) is to be deposited with the Cashier as peremptory receipt at the time of obtaining the process for so many days as the Court shall order, not being ordinarily less than fifteen days, and the number of days required for the coming and going of the officer; but where the officer is not to be left in possession, then the daily fee is to be deposited only for the time to be occupied by the officer going, effecting the attachment and returning. When the inventory filed by the judgment-creditor shows the property to be of such small value that the expense of keeping it in custody may probably exceed the value the Court shall fix the daily fee with reference to the provisions of Order 21, Rule 43 of the Code of Civil Procedure:

Provided that, if it appears that for any reason the number of days fixed by the Court under this note, and in respect of which fees have been paid, is likely to be exceeded and the decree-holder desires to maintain the attachment, the decree-holder shall apply to the Court to fix such further number of days as may be necessary and the additional fees in respect thereof shall be deposited in advance. If such additional fees be not paid within the period originally fixed and in respect of which fees have been paid, the attachment shall cease on the expiry of that period.

The Nazir will purchase a Court-fee stamp of the amount actually incurred in deputing a peon and affix it on the process under the signature of the Presiding Officer in payment of the fees. The balance of the deposit, if any, will be available for refund to the party.

Note 2.—(1) When a sale of immoveable property mentioned in Article 7 is set aside, under section 47 or under Order 21, Rule 92 of the Code of Civil Procedure, or under section 174 of the Bengal Tenancy Act (VIII of 1885), any poundage or other fee charged for selling the property shall, on application, be refunded.

(2) The fee under clause (*a*) must be paid when the process is obtained.

The percentage or poundage under clause (*b*) must be paid (1) in a case where the purchaser is a person other than the decree-holder, at the time of making the application for payment of the proceeds of the sale out of Court, as provided in rule 4, and (2) in a case where the decree-holder has been permitted to purchase, at the time of the presentation of his application for permission to set off the purchase money against the amount of his decree as provided in rule 5.

(3) The percentage leviable under this article shall be calculated on multiples of Rs. 25 (*i.e.*, a poundage fee of 8 annas should be levied for every Rs. 25 or part of Rs. 25 realized by the sale up to Rs. 1,000 and in the case of the proceeds of the sale exceeding Rs. 1,000, an additional fee of 4 annas for every Rs. 25 or part thereof should be levied).

(4) In cases in which several properties are sold in satisfaction of one decree, only one poundage fee, calculated on the gross sale proceeds should be levied, 2 per cent. being charged on the gross sale proceeds up to Rs. 1,000 and one per cent. on such proceeds exceeding Rs. 1,000.

Note.—Fractions of an anna will not be levied, less than six pies being ignored and six pies and over treated as one anna.

2. Notwithstanding the provisions of Rule 1 no fee shall be chargeable for serving and executing any process, such as a notice, rule, summons, a warrant of arrest, which may be issued by any Court of its own motion, solely for the purpose of taking cognizance of and punishing any act done, or words spoken, in contempt of its authority.

3. The fees hereinbefore provided, except those mentioned in the next rule, shall be payable in advance at the time when the petition for service or execution is presented, and shall, except where otherwise provided be paid by means of stamps affixed to the petition in addition to the stamps necessary for its own validity.

4. The proceeds of a sale effected in execution of any decree will only be paid out of Court on an application made for that in writing, and the poundage fee for selling the property provided in clause (*b*) of Article 7 must be paid by stamps affixed to, or impressed upon, the first of such applications, whether it be or be not made by the person who obtained the order for sale, or whether it does or does not extend to the whole of the proceeds. No fee will be chargeable upon any such application subsequent to the first.

5. When a decree-holder happens to be the auction-purchaser his application for an order to set off the purchase money shall, in addition to the stamp necessary for its own validity, be stamped with stamps of the value of the poundage-fee due for selling the property under clause (*b*), Article 7.

6. Upon the hearing of such petition, the costs of execution, including the amount of the stamp attached to the petition, shall be ascertained and shall be added to the decree; and in cases in which the amount of the purchase-money exceeds the amount of the decree and of such costs, the decree-holder who has so purchased the property shall pay into Court 25 per cent. of the balance of the purchase-money after deducting the amount of the decree and of such costs, and shall pay the balance at the expiration of fifteen days in accordance with Order 21, Rule 85 of the Code of Civil Procedure.

7. When in order to the service of any process, a peon has to cross a ferry, the amount, if any, legally eligible as toll shall be paid by the Court executing such process from its special permanent advance sanctioned by the Local Government for the purpose.

Note.—This rule will not apply to the district of Purnea and the Madhepura Munsifi in the district of Bhagalpore or the periods of the year during which additional fees under the next succeeding rule are leviable.

8. Throughout, or in any part of the district of Purnea and the Madhepura Munsifi in the district of Bhagalpore and for the periods of the year during which travelling except by boat is, in the opinion of the District Judge, impracticable, the fees chargeable for the service of processes shall be increased by 25 per cent. in order to provide for payment of the boat hire or ferry toll rendered necessary by the state of the country. The additional fees may, however, be reduced to 12½ per cent. over the fees ordinarily leviable, at the discretion of the District Judge, in any part of the district where, or at any season of the year when, the levy of the larger amount is found to be unnecessary.

Note (1).—Fractions of an anna will not be levied, less than six pies being ignored and six pies and over being treated as one anna.

Note (2).—The process-servers' boat-hire passed under this rule should alone be included under the head of "Process serving charges" under "Special Contingencies". (*Vide* Resolution of the Financial Department of the Government of Bengal, dated the 4th August, 1890.)

9. In cases in which the process is to be served in the jurisdiction of another Court, the proper fee chargeable under Rule 1 read with Rule 7 shall be levied, in the manner above directed, on the application for the transmission of the process to that Court, and a note shall be made on the process stating that this has been done. A Court which receives from another Court, whether in the same province or not, a process bearing a certificate that the proper fee has been levied, shall cause it to be served without further charge.

Note (1).—The fees paid in pursuance of these rules must in all proceedings be deemed and treated as part of the necessary and proper costs of the party who pays them.

Note (2).—By arrangement between the Government of India and His Highness the Nizam of Hyderabad, civil process for service or execution within His Highness' territories will be issued and served in accordance with the above rule.

Processes issued by Civil Courts in His Highness the Nizam's territories will be served or executed in Bihar and Orissa free of charge.

Note (3).—Processes issued by Courts in India for service by Colonial Courts must be accompanied by a remittance sufficient to meet the cost of service.

In Mauritius, the cost of service is Rs. 3 per person in town, and to this must be added 75 per cent. mile travelling allowance for service in the country. For processes not accompanied by an English translation and requiring translation in Mauritius, an additional fee of Rs. 10 should be remitted.

Note (4).—By arrangement between the Government of India and the Chiefs of the Feudatory States named in the Schedule below, civil processes for service or execution within the territories of those States will be issued and served in accordance with the above rule.

Processes issued by the Civil Courts within those territories of these States will be served or executed in Bihar and Orissa free of charge in accordance with the rule above.

SCHEDULE.

Baster	Raigarh	Korea
Nandgaon	Sarangarh	Changlehaker
Nandgaon	Udaipur	Makrai
Khairagarh	Jashpur	Chhui Khadan
Kawardha	Sirguja	Sakti

CRIMINAL.

1. The fees hereinafter mentioned shall be chargeable for serving and executing the processes to which the fees are respectively attached, *viz.*:—

(1) *Warrant of arrest.*—For the warrant in respect of each person named therein .. .. .. Rs. 1 8 0

(2) *Summons.*—For the summons in respect of one person, or of the first two persons residing in the same place .. .. Re. 0 12 0

In respect of every additional person named therein .. Re. 0 6 0

(3) *Proclamation for absconding party under section 87 of the Criminal Procedure Code.*—For the proclamation .. .. Rs. 3 0 0

(4) *Proclamation for witness not attending* (*S.* 87).—For the proclamation .. .. .. Re. 0 12 0

(5) *Warrant of attachment.*—For the warrant .. Rs. 1 8 0

Where it is necessary to place officers in charge of property attached, for each officer so employed, *per diem* .. .. Re. 0 6 0

(6) *Written order.*—For the order .. .. Rs. 1 8 0

(7) *Injunction.*—For the injunction .. .. Rs. 1 8 0

Note:—The provisions of clauses (*iii*) and (*iv*) of section 31, Act VII of 1870, and of rules 3 and 4 below, apply also to injunctions. Criminal officers are, however, reminded that injunctions in proceedings not connected with offences are not chargeable with any fee. An injunction under section 143, Criminal Procedure Code, would, for example, be chargeable with the above fee; whereas an injunction under section 144 or 145 of the Code would not carry any fee. (Rule No. 10 of 26th September, 1882.)

(8) *Notice.*—For the notice .. .. Rs. 1 8 0

Note 1.—Fractions of an anna will not be levied, less than six pies being ignored and six pies and over being treated as one anna.

IX.—DENOMINATION AND KIND OF STAMPS.

A.—RULES MADE BY THE GOVERNMENT OF INDIA.

NOTIFICATIONS OF THE GOVERNMENT OF INDIA UNDER THE COURT-FEES ACT (VII OF 1870).

Calcutta, the 20th March, 1885.

(*Published on p. 247 of the* Fort St. George Gazette, *Pt. I, 31st March,* 1885.)

No. 1522.—In exercise of the powers conferred by section 26 of the Court-Fees Act, 1870, the Governor-General in Council directs that the additional Court-fee payable under section 19-E of the said Act on Probates and Letters of Administration shall be denoted either—

(*a*) by impressed and adhesive stamps in the manner prescribed in Notification No. 361 of 18th April, 1883; or

(*b*) wholly by adhesive stamps of the kind described in clause 1 of Notification No. 361 of 18th April, 1883.

Simla, the 18th April, 1883.

(*Published on p.* 307 *of the* Fort St. George Gazette, *Pt. I, 8th May,* 1883.)

No. 361.—In exercise of the powers conferred by sections 26 and 35 of the Court-Fees Act, 1870, and of all the other powers enabling him in

this behalf; and in supersession of notification by the Government of India in the Financial Department No. 1520, dated 5th March, 1875, and all other notifications on the subject, the Governor-General in Council is pleased to issue the following directions:—

I. When in any case the fee chargeable under the said Act is less than Rs. 10, such fee shall be denoted by adhesive stamps only. Such adhesive stamps shall either be the adhesive stamps [1]of the size and pattern introduced in 1883 bearing the words "Court-fee," and containing three lines in the middle with the Queen's head and the value printed on the left side, [1]or adhesive stamps of any different shape, size or pattern, bearing the words "Court-fees" which may hereafter be issued for use in supersession of, or in addition to, the adhesive stamps now in use.

II. When in any case the fee chargeable under the said Act amounts to or exceeds Rs. 10, such fee shall be denoted by impressed stamps bearing the words "Court-fees," adhesive stamps being only employed to make up fractions of less than Rs. 10.

III. If in any case the amount of the fee chargeable under the said Act involves a fraction of an anna, such fraction shall be remitted.

IV. This notification shall take effect on and after the 1st June, 1883.

Simla, the 29th March, 1895.

(*Published on p.* 431 *of the* Fort St. George Gazette, *Pt. I, dated 9th April,* 1895.)

No. 1494-*S.R.*—In exercise of the powers conferred by section 26 of the Court-Fees Act, VII of 1870, and in supersession of so much of paragraph 1 of the Notification in this Department No. 361, dated the 18th April, 1883, as authorised the use of the adhesive stamp, bearing the words "Court-fees," in use on the date of the notification for denoting the fee chargeable under the said Act, when in any case the fee is less than Rs. 10 the Governor-General in Council is pleased to direct that in such cases the adhesive stamps to be used shall, with effect from the 1st July, 1895, be adhesive stamps of the size and pattern introduced in 1883 bearing the words "Court-fee" and containing three lines in the middle, with the Queen's head and the value printed on the left side.

Simla, the 23rd August, 1895.

(*Published on p.* 1014 *of the* Fort St. George Gazette, *Pt. I, 3rd September,* 1895.)

No. 4070-*S.R.*—In exercise of the powers conferred by section 26 of the Court-Fees Act, VII of 1870, and in supersession of the Notification in this Department No. 1678, dated the 18th July, 1873, the Governor-General in Council is pleased to direct that the fees referred to in the first paragraph of section 3 of the said Act shall, with effect from the 1st September, 1895, be denoted by adhesive stamps of the size and pattern introduced in 1883, bearing the words "Court-fee" and containing three lines in the middle with the Queen's head and the value printed on the left side and the word "Service" overprinted on the stamps.

Simla, the 4th August, 1896.

(*Published on p.* 1065 *of the* Fort St. George Gazette, *Pt. I,* 11*th August,* 1896.)

No. 3318-*S.R.*—In exercise of the powers conferred by section 26 of the Court-Fees Act (VII of 1870), and in continuation of the Notifications of the Government of India in the Finance and Commerce Department,

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[1] Substituted by Government of India Notification No. 1494-S.R., dated 29th March, 1895; *Fort St. George Gazette,* 9th April, 1895, Pt. I, p. 431. This order came into force on the 1st July, 1895.

Nos. 361 and 4070-S.R., dated the 18th April, 1883, and the 23rd August, 1895, respectively, the Governor-General in Council is pleased to direct that the fees referred to in the first paragraph of section 3 of the said Act may be denoted by adhesive stamps bearing the Queen's head in a circle in the centre and the value printed on each side thereof, and overprinted with the words "High Court Service".

B.—RULES MADE BY THE MADRAS GOVERNMENT.

II. RULES FOR THE STAMPS TO BE USED.

(*a*) *Adhesive stamps and impressed stamps when to be used respectively.*—In exercise of the powers conferred by sections 26 and 35 of the Court-Fees Act, 1870, as amended by Act XXXVIII of 1920, and the Madras Court-Fees (Amendment) Act, 1922, and all other powers enabling them in this behalf and in supersession of the notification of the Government of India No. 361, dated 18th April, 1883, published at page 307 of the *Fort St. George Gazette*, Part I, dated 8th May, 1883, the Local Government are pleased to issue the following directions:—

I. When in any case the fee chargeable under the said Act is less than Rs. 25, such fee shall be denoted by adhesive stamps only. Such adhesive stamps shall either be the adhesive stamps of the size and pattern introduced in 1883 bearing the words "Court-fee," and containing three lines in the middle with the King's head and the value printed on the left side, or adhesive stamps of any shape, size or pattern bearing the words "Court-fees" which may hereafter be issued for use in supersession of, or in addition to, the adhesive stamps now in use.

II. When in any case the fee chargeable under the said Act amounts to or exceeds Rs. 25, such fee shall be denoted by impressed stamps bearing the words "Court-fees," adhesive stamps being only employed to make up fractions of less than Rs. 25.

III. If in any case the amount of the fee chargeable under the said Act involves a fraction of an anna, such fraction shall be remitted.

IV. This notification shall come into force on the 1st March, 1924, from which date adhesive labels of the value of Rs. 10, 15 and 20 will be introduced. (Notification at pp. 236-237, Pt. I of the *Fort St. George Gazette*, dated 4th March, 1924.) (G. O. Mis. No. 297, Revenue, dated 25th February, 1924.)

(*b*) *Single stamps to be used as far as possible.*—In exercise of the powers conferred by section 27 of the Court-Fees Act, 1870, and in modification of the notification published at page 847 of the *Fort St. George Gazette*, dated the 30th April, 1872, and of all other notifications on the subject, the Right Honourable the Governor in Council is pleased to issue the following rules:—

1. When in the case of fees amounting to less than Rs. 25 the amount can be denoted by a single adhesive stamp, such fees shall be denoted by a single adhesive stamp of the required value. But if the amount cannot be denoted by a single adhesive stamp, or if a single adhesive stamp of the required value is not available, an adhesive stamp of the next lower value available shall be used and the deficiency shall be made up by the use of one or more additional adhesive stamps of the next lower values, which may be required to make up the exact amount of the fee.

NOTE.—"The stamp used to denote any fee under the Court-Fees Act shall be a stamp of value equal to the fee required, or in cases where there is no stamp of the exact value, then the first stamp shall be of the next lower available value and the balance shall be made up by stamps of smaller value similarly selected."—(*Notification dated 20th April, 1872, p. 847 of Pt. I of the* Fort St. George Gazette, *dated 30th April, 1872.*)

2. When in the case of fees amounting to or exceeding Rs. 25, the amount can be denoted by single impressed stamp, the fees shall be denoted by a single impressed stamp of the required value. But if the amount cannot be denoted by a single impressed stamp, or if a single impressed stamp of the required value is not available, an impressed stamp of the next lower value available shall be used, and the deficiency shall be made up by the use of one or more additional impressed stamps of the next lower values available which may be required to make up the exact amount of the fee in combination with adhesive stamps to make up fractions of less than Rs. 25.

3. Any adhesive stamps which may be used under Rule 2 shall be affixed to the impressed stamp of the highest value employed in denoting the fee.

4. When two or more impressed stamps are used to make up the amount of the fee chargeable under the Court-Fees Act, a portion of the subject-matter shall be written on each impressed stamp so used, and the writing on each stamp shall be attested by the signature of the person or persons executing the document.

NOTE.—The following executive instructions have been issued by the Local Government:—When two or more impressed stamps are used to make up the amount of the fee chargeable under the Court-Fees Act, a portion of the subject-matter shall ordinarily be written on each stamped sheet. Where this is impracticable or seriously inconvenient the document shall be written on one or more sheets bearing impressed stamps of the highest value, and the remaining stamps shall be punched and cancelled by the Court or its chief ministerial officer and attached to the grant, a certificate being recorded by the Court or its chief ministerial officer on the face of the first sheet of the document to the effect that the full Court-fee (*viz.*, Rs.....) has been paid in stamps. The writing on each stamped sheet shall be attested by the signature of the person or persons executing the documents.—(*G. O. No.* 17, *Revenue, dated* 5*th January,* 1906.)

5. When one or more impressed stamps used to denote a fee are found insufficient to admit of the entire document being written on the side of the paper which bears the stamp, so much plain paper may be joined thereto, as may be necessary for the complete writing of the document, and the writing on the impressed stamps and on the plain paper shall be attested by the signature of the person or persons executing the document.

6. In the blank space left in the adhesive stamps, the vendor shall insert the name of the purchaser, the date of sale and his own ordinary signature. —(G. O. No. 635, Revenue, dated 19th May, 1883, and H. C. Pros. No. 2226, dated 10th July, 1883, published at p. 322 of Pt. I of the *Fort St. George Gazette,* dated 22nd May, 1883 as amended by G. O. No. 297, Revenue, dated 25th February, 1924.)

NOTE.—For rules made by the other High Courts, *see* the Rules and Orders of the respective Courts.

X.—CANCELLATION OF STAMPS.

A.—RULES MADE BY THE MADRAS GOVERNMENT.

359. [277.] Under Act VII of 1870, section 30, Court-fee labels are cancelled by punching out the figurehead, but this does not perhaps afford sufficient protection, and pending further consideration on the subject, the Governor-General in Council directs that the Record-keeper of every Court shall, when a case is decided and the record consigned to his custody, punch a second hole in each label distinct from the first, and note the date of his doing so at the same time. The second punching should not remove so

much of the stamp as to render it impossible or difficult to ascertain its value or nature.—(G. I. Resolution No. 1763, Financial, dated 24th July, 1873. G. O. No. 1095, Financial, dated 5th August, 1873.)

360. [278.] The attention of all Courts and officers having to deal with Court-fees stamp is called to the importance of punching out from the stamps the figurehead and destroying the piece punched out before taking action upon the documents to which the stamps may be attached. The Court or office issuing copies, certificates, or other similar documents liable to stamp duty, shall, before issue, cancel the labels affixed to them by punching out a portion of the label in such a manner as to remove neither the figurehead, nor the part of the label upon which its value is expressed. As an additional precaution, the signature of the officer attesting the document with the date should be written across the label and upon the paper on either side of it as is frequently done by persons signing stamped receipts.—(G. O. No. 263, Judicial, dated 14th February, 1874; G. I. Resolution No. 3373, Financial, dated 24th September, 1875; G. O. No. 2171, Judicial, dated 7th October, 1873.)

The above directions apply only to adhesive labels used under the Court-Fees Act. Impressed stamps used for denoting Court-fees need not be cancelled or punched otherwise than as required by section 30 of the Court-Fees Act.

CIRCULAR ORDERS.

(*I*) *Cancellation of stamps.*

(1) *Check of stamps on papers received by chief ministerial officer and their punching under his immediate supervision.*—All applications, petitions, etc., intended for presentation to the lower Court shall be presented to the Court itself or to its chief ministerial officer, whose duty it will be to examine and punch the stamps, and who will be held responsible for the receipt of any stamps **which have previously been used.**

The Governor in Council resolves to direct all District Judges to make it a rule, for strict observance in the Courts within their jurisdiction, that the Serishtadar in the Superior Courts, and Head Clerk in the District Munsif's Courts, shall personally attend to, and be personally responsible for the strict fulfilment of, the duty of receiving documents to be filed, examining the correctness of the stamps attached thereto, and immediately cancelling such stamps, as required by section 30 of the Court-Fees Act. There will be no objection to the ministerial officers named employing trustworthy subordinates to do the mere manual work of cancelling the stamps as proposed by some of the Judges; but it will be on the distinct understanding that the Serishtadars or the Head Clerks, as the case may be, will be personally responsible for the due execution of the duty and for any defalcation or fraud that may occur in connection with it. The Government expect District and Subordinate Judges and District Munsifs so to inspect and test the work of their officers from time to time as to ensure attention to the duty, and to limit opportunities for fraud.—(*G. O. No.* 1944, *Madras, dated* 16*th August,* 1877.)

(2) *Cancellation of adhesive Court-fee labels to prevent re-user thereof.*—The Governor-General in Council has recently had under consideration the best method of cancelling adhesive Court-fee labels so that they may not be fraudulently used again.

(*a*) *Second punching thereof by the Record-keeper.*—Under Act VII of 1870, section 30, Court-fee labels are cancelled by punching out the figure-head, but this does not perhaps afford sufficient protection and, pending further consideration of the subject, the Governor-General in Council directs that the Record-keeper of every Court shall, when a case is decided and the

record consigned to his custody, punch a second hole in each label distinct from the first and note the date of his doing so at the same time. The second punching should not remove so much of the stamp as to render it impossible or difficult to ascertain its value or nature.—(*G. I. Resolution, 24th July,* 1873; *G. O., Madras, No.* 1095, *dated 5th August,* 1873.)

The directions in G. I. Resolution, 24th July, 1873, apply only to adhesive labels used under the Court-Fees Act. Impressed stamps used for denoting Court-fees need not be cancelled or punched otherwise than as required by section 30 of the Court-Fees Act. (*G. O. No.* 2509, *dated 20th September,* 1883.)

The Governor-General in Council observes that, under the provisions of the Court-Fees Act, the cancellation of stamps must be effected by the Court or Office receiving the document to which a stamp has been affixed.

(*b*) *Labels affixed to certified copies, certificates, etc., should be cancelled before issue.*—His Excellency in Council is not satisfied that the rules at present in force provide adequate security for the stamp revenue in the case of labels affixed to certified copies of papers which are frequently only imperfectly obliterated by the Court issuing these documents.

In supersession, therefore, of existing orders on the subject, the Governor-General in Council is pleased to direct that the Court or Office issuing copies, certificates or other similar documents liable to stamp duty, shall, before issue, cancel the labels affixed to them by punching out a portion of the label in such a manner as to remove neither the figure-head, nor that part of the label upon which its value is expressed. As an additional precaution the signature of the officer attesting the document with the date should be written across the label and upon the paper on either side of it as is frequently done by persons signing stamped receipts. (*G. I. Resolution No.* 3373, *dated 24th September,* 1875; *G. O., Madras, No.* 2171, *dated 7th October,* 1875.)

(*c*) *Second punching thereof by the Court on receiving them and third punching on being consigned to the record.*—The Resolutions of the Government of India, embodied in Government Orders, Madras, No. 1095, dated 5th August, 1873, and No. 2171, dated 7th October, 1875 (paragraphs 1 and 3 *supra*) provide that the Courts issuing the certified copy or certificate should, before issue, cancel the labels affixed thereto by punching out a portion of them but not the figure-head or that part upon which their value is expressed, the attesting officer also writing his name and date across them, and it is the Court in which such certified copy or certificate is produced, that should require the receiving officer at once to punch out the figure-head as directed by section 30 of the Court-Fees Act before the document is filed or acted on. When the copy or certificate is, with the record of the case in which it is filed, transferred to the custody of the record-keeper, he should punch a third hole in each label distinct from the previous two holes and at the same time note the date of his doing so. He need not necessarily write across the stamp, though it will be well to do so, if there is still room. (*H. C. Circular No.* 894-*A, dated* 13*th March,* 1884.)

(3) *Record-keeper to examine papers as soon as they are consigned to his custody and on each occasion on which they are received back after being taken for reference.*—On receiving stamped documents into the record-room, the record-keeper shall examine the stamps, report if they are incorrect, note any erasures or suspicious appearances they may present, and be held responsible for their safe custody thereafter. If a record or any document forming part of a record is taken from the record-room for any purpose, it shall be his duty to denote to whom, and for what purpose, it has been delivered, and on its return, to examine it and ascertain if it be in the same

condition in which it was issued from his office, and, if it be not in the same condition, to bring the circumstance to notice. (*H. C. Circular No.* 2131, *dated* 13*th October*, 1881.)

(4) *Stamps affixed to documents to be punched before any action is taken.*—Standing Orders Nos. 86 and 88 in Section V of the Stamp Manual will be amended as shown in the Annexure to this order. The Board of Revenue is requested to incorporate the provisions of Chapter VII, Section V of the Stamp Manual as now amended in the place of note (3) to paragraph 6 of its Standing Order No. 172.

His Excellency the Governor in Council desires to draw the attention of officers in all departments to the provisions of these Standing Orders. It should specially be noted that, as laid down in Standing Order No. 88, it is the duty of every officer before whom a document bearing an adhesive stamp label is produced, to see that it has been properly punched and cancelled before any action is taken on it. The rule laying down that every clerk who submits for orders a document bearing an adhesive stamp shall be responsible for seeing that it has been duly punched, should be strictly enforced. There is reason to believe that serious loss of revenue is caused by the improper use a second time of adhesive stamps, which have not been duly cancelled on first presentation. (*G. O. No.* 2109, *Revenue, dated* 22*nd June*, 1910.)

Annexure.

Standing Order No. 86.—"Every officer presiding over a Court or Office and receiving a document liable to stamp duty under the Court-Fees Act and stamped with adhesive stamps should, after satisfying himself that the document is properly stamped, see that a date stamp is applied to it in such a manner as to cover or touch some part of the stamps, but not in such a way as to obliterate the entries thereon or to render the detection of forgeries more difficult. The stamp should then be cancelled by punching out the figure-head. The punch used for this purpose should be large enough completely to remove the figure-head.

(5) *Documents insufficiently stamped to be returned without being punched.*—If the document is insufficiently stamped the date stamp should not be applied to the stamps on it, nor should the stamps be cancelled by punching out the figure-head. The document should be returned to the parties concerned for re-submission properly stamped.

[Stamps affixed to documents in excess of legal requirements should be punched. No refund or renewal can be granted where the amount of the excess value is less than one rupee. In cases where the value of excess stamps is not less than one rupee, the party concerned will be allowed refund of their value after deducting one anna in the rupee. He should be given a certificate (Form LXXXVI, Appendix II to the Manual) to the effect that he is entitled to receive back their value less discount within thirty days at a specified treasury, an advice (Form LXXXVII) being at the same time sent to the treasury officer. Stamps themselves should, on no account, be removed from the documents and returned to the parties. In making payments, the treasury officer should, as far as possible, follow the instructions in Standing Order 101.] (*G. O. No.* 270, *Separate Revenue, dated* 6*th April*, 1916.)

In order to prevent fraud on the part of ministerial servants in a Court or Office who might connive at old punched adhesive stamps being re-introduced, the record-keeper of every Court or Office shall, as soon as the record is made over to his custody, punch a second hole in each adhesive label with a wad-cutter punch of diamond shape before putting

the document into the record-room. This second punching should not remove so much of the stamp as to render it difficult to ascertain its value or nature. Impressed stamps used for denoting Court-fees need not be cancelled or punched otherwise than as required by section 30 of the Court-Fees Act."

Standing Order No. 88.—"It is the duty of every officer to whom a document liable to stamp duty under the Court-Fees Act is submitted for orders to see that any adhesive stamps thereon have been properly punched. The section head or other responsible ministerial officer submitting papers for orders shall see that all adhesive stamps therein contained have been punched and defaced as directed in Standing Order No. 86, and any section head or other ministerial officer submitting a document bearing an unpunched adhesive stamp shall be required to pay the value of the stamps.

Officers receiving documents liable to stamp duty under the Court-Fees Act should also look at the date of sale recorded on adhesive stamps and, if they find that the date of sale as recorded on the stamp is suspiciously remote, they should enquire into the history of the stamp."

(6) *Stamps in excess of legal requirement—Punching of—Refund of the excess value.*—In supersession of Circular Dis. No. 1921 of 1914, dated the 17th November, 1914, the High Court directs, with reference to G. O. No. 270, Separate Revenue, dated the 6th April, 1916, that all stamps affixed to documents received in Courts, including those in excess of legal requirements, should invariably be punched. The party who has affixed stamps in excess will be allowed a refund of their value, less one anna in the rupee, except in cases in which the amount of the excess value is less than a rupee. Stamps affixed in excess should on no account be removed from the documents and returned to the party; but the presiding officer of the Court will give him a certificate in Form No. LXXXVI, Appendix II to the Madras Stamp Manual, to the effect that he is entitled to receive back their value less discount within 30 days at a specified treasury and at the same time send an advice in Form No. LXXXVII to the treasury officer. The certificate will become null and void after the expiry of the 30 days and refund will not be admissible thereafter.

The presiding officer of the Court will note under his initials the date and number of the certificate on the stamps affixed in excess, so as to prevent fraud. (*H. C. Dis. No.* 1320, *dated 22nd July,* 1916.)

(*II*) *Reporting cases of infringement of the rules for the sale of stamps.*

All officers presiding over Civil Courts are requested to bring to the notice of the Revenue Divisional Officers cases which may come to their notice of infringement of Rule 15 of Standing Order No. 75 at page 291 of the Stamp Manual (Edition 1902) prohibiting a licensed vendor from attempting to supply a stamp higher in value than the highest he is authorized to sell by the sale of a number of impressed sheets of lower value. They are not expected to hold any inquiry as to whether the rule has been actually infringed or not, but merely to give information of the cases to the Revenue Department with particulars such as the serial numbers of the stamps, their value, date of their sale, and name of vendor and purchaser appearing on the stamps themselves. (*H. C. Dis. No.* 1096, *dated* 19*th June,* 1916.)

RULES MADE BY THE HIGH COURT OF LAHORE.

Rules made by the High Court under the power conferred by section 30 of the Court-Fees Act, VII of 1870, and all other powers in that behalf, regulating the cancellation of Court-fee stamps.

RULES.

1. The cancellation of Court-fee stamps shall be effected,—

(*a*) when a document bearing a Court-fee stamp is received by a Court competent to receive the same;

(*b*) when a Court-fee stamp is paid in on account of process fee;

(*c*) when a Court-fee stamp is affixed to a document issued by any Court or office;

(*d*) when the record of a case in which Court-fee stamps have been filed is finally made over to the Record-keeper for safe custody.

2. Court-fee stamps falling under clauses (*a*) and (*b*) of the foregoing rule shall be cancelled immediately on receipt of the document or stamp, by such officer as the Court may from time to time appoint, in writing, in the manner prescribed by section 30 of the Court-Fees Act. As an additional precaution, the cancelling officer should affix his signature and the date across each label, at the time of cancellation, in durable ink.

3. In regard to stamps on documents falling under clause (*c*) of Rule 1 the Government of India have directed in Financial Department Resolution No. 3373, dated the 24th September, 1875, that the Court or office *issuing* copies, certificates, or other similar documents liable to stamp duty under the Court-Fees Act shall, *before issue,* cancel the labels affixed to them by punching out a portion of the label in such a manner as to remove neither the figure-head nor that part of the label on which its value is expressed, and that, as an additional precaution, the signature of the officer attesting the document, with the date, shall be written across the label, and upon the paper on either side of it.

4. The rules for the cancellation of Court-fee stamps by the Record-keeper are contained in a resolution of the Government of India in the Financial Department, No. 1763, dated the 24th July, 1873, in which it is ordered that the Record-keeper of every Court shall, when a case is decided and the record consigned to his custody, punch a second hole, or, in the case of stamps falling under clause (*c*), rule 1, a third hole, in each label, distinct from the first, *and note the date of doing so at the same time.* Special attention is requested to the words in italics, as the direction therein contained is always not complied with. The Record-keeper's punching should not remove so much of the label as to render impossible or difficult to ascertain its value or nature. From the annexed copy of a resolution of the Government of India, No. 3047, dated 5th September, 1883, it will be seen that these directions apply only to *adhesive labels* used under the Act, and not to *impressed stamps* which need not be punched a second time.
Copy of a resolution of the Government of India in the Department of Finance and Commerce, No. 3047, *dated Simla, the* 5*th September,* 1883.

Resolution.—It was directed in Financial Resolution No. 1763, dated 24th July, 1873, that the Record-keeper of every Court shall, when a case is decided and the record consigned to his custody, punch a second hole in each label distinct from the first which is prescribed by section 30 of the Court-Fees Act, and note the date of doing so at the same time.

These directions apply only to adhesive labels used under the Court-Fees Act. Impressed stamps used for denoting Court-fees need not be cancelled or punched otherwise than as required by section 30 of the Court-Fees Act.

5. Whenever the custody of a record containing Court-fee stamps is transferred from one official to another before final disposal, the receiving officer shall examine the Court-fee stamps in the record and either certify on the index of papers that they are complete, or immediately bring to notice any deficiency, as the case may require.

6. Record-keepers will be held personally responsible that the stamps appertaining to the records under their charge are complete, and that they have been duly cancelled in accordance with these instructions. Should a

record be sent into the record-room in which the stamps are incomplete or not duly cancelled, the Record-keeper shall report the circumstance at once to the head of the office, and shall defer entering the case in its appropriate register until orders have been passed in the matter.

7. When a record containing Court-fee stamps is taken out of the record-room for any purpose, each official through whose hands it passes must note on the index of papers or on the list of records where such a list is with the record, that he has examined the Court-fee stamps in the record, and that they are complete, or, if they are not complete, at once report the fact for orders.

Note 1. To facilitate the examinations required by the above rules a column has been inserted in the index of papers attached to each record which shows at a glance what papers in the record bear Court-fee stamps, and the number and value of the stamps attached to each of such papers.

Note 2. These rules do not supersede in any way the instructions contained in paragraph 49 of the Punjab Stamp Manual, Edition of 1913.

Note 3. Paragraph 50 of the Punjab Stamp Manual, Edition of 1913, contains further instructions with regard to fraudulent practices in respect of Court-fee labels and is added here for the information of the Courts:—

"50. Further precautions against the fraudulent use of Court-fee labels a second time were, under the orders of Government, prescribed by the Superintendent of Stamps in his Circular No. 1, dated 24th April, 1877, of which the effective portions are extracted below. It is to be noted that at that time adhesive labels alone were used to denote fees of Court:—

"The first and most important point to be guarded against is the re-use of stamps which have once been used; such stamps may have been punched, or they may have been left unpunched, and passed into the record-office and there removed. In the case of a removed stamp that has been punched once, it is clear that its use a second time can only be effected by the dishonesty of the native subordinate who, in the first instance, receives the documents presented by suitors. In the case of a removed stamp that has not been punched, it is possible that it may have been so little injured in the removal as to be used a second time without detection, unless the stamps be closely examined; and it may pass undetected, either from dishonesty or from want of vigilance on the part of the native subordinate. In order effectually to prevent frauds of this nature, it is absolutely necessary that the native subordinate whose duty it is to see that the full fee has been affixed in each case and to punch the stamps and to record orders, should be made to stand or sit within full view of the officer and in that position to perform his task, certifying on each petition that the full fee has been affixed, and all stamps have been punched. It is of the utmost importance that this subordinate, be his position ever so high on the establishment, should be allowed no time or opportunity for tampering with the stamps.

"When files of decided cases are sent to the record-room, the Record-keeper should be required, without any loss of time, to examine the stamps and punch a second hole in each stamp, affixing the date on which he does so.

"The last precaution against the fraudulent re-use of Court-fee stamps lies in the periodical examination of files by the Superintendent of Stamps, and by his Personal Assistant of files in the record-rooms of all Courts and offices where stamps are filed or kept."

8. The following executive instructions to be observed when a document is written upon two or more impressed stamps which are used to make

up the fee chargeable under the Court-Fees Act, VII of 1870, have been issued by the Financial Commissioner:—

When two or more impressed stamps are used to make up the amount of the fee chargeable under the Court-Fees Act, a portion of the subject-matter shall ordinarily be written on each stamped sheet. Where this is impracticable or seriously inconvenient, the documents shall be written on one or more sheets bearing impressed stamps of the highest value, and the remaining stamps shall be *punched and cancelled by the Court* and filed with the record, a certificate being recorded by the Court on the face of the first sheet of the document to the effect that the full Court-fee has been paid in stamps. The writing on each stamped sheet shall be attested by the signature of the person or persons executing the documents.

Note.—As regards the Rules made by the other High Courts, *see* the Rules and Orders of the respective High Courts.

XI.—RULES FOR THE REFUND OF COURT-FEE STAMPS.

A.—RULES FRAMED BY THE GOVERNMENT OF INDIA.

In supersession of all existing orders on the subject, the Governor-General in Council is pleased to authorize the refund of the value of impressed Court-fee stamps and of Court-fee adhesive labels in accordance with the following rules:—

1. (*a*) When any person is possessed of impressed Court-fee stamps for which he has no immediate use, or which have been spoiled or rendered unfit or useless for the purpose intended, or

(*b*) When any person is possessed of two or more (or, in the case of denominations below Rs. 5, four or more) Court-fee adhesive labels *which have never been detached from each other* and for which he has no immediate use, the Collector shall, on application, repay to him the value of such stamps or labels in money, deducting one anna in the rupee, upon such person delivering up the same to be cancelled and proving to the Collector's satisfaction that they were purchased by him with a *bona fide* intention to use them, that he has paid the full price thereof, and that they were so purchased or, in the case of impressed Court-fee stamps so purchased, spoiled or rendered useless, within the period of six months preceding the date on which they are so delivered. Provided that Local Governments may, in special cases, allow refunds when application is made within one year from the date of purchase of the stamps or labels, or, also in the case of impressed Court-fee stamps, within one year from the date on which the stamps were spoiled or rendered useless. The Local Governments may, at their discretion, delegate this power to any subordinate authority.

2. When a licensed vendor surrenders his licence or dies, the Collector may, at his discretion, if he considers that the circumstances justify the application, repay to him or his representatives, as the case may be, the values of stamps and labels, not spoiled or rendered unfit for use, returned into the Collector's store, deducting one anna in the rupee; or he may issue stamps and labels of other values in exchange, provided that, in the case of adhesive Court-fee labels, their value may not be refunded, nor stamps and labels of other values issued in exchange, unless, in cases where the value of each label is not less than Rs. 5, there are at least two such

labels which have never been detached from each other; and in cases where the value of each label is less than Rs. 5 unless there are at least four such labels which have never been detached from each other.

3. When adhesive labels are attached to impressed sheets of Court-fee stamps in accordance with the directions contained in Notification by the Government of India in this Department No. 361, dated the 18th April, 1883, such labels should be regarded as impressed stamps for the purposes of refund under these rules.

B.—RULES FRAMED BY THE MADRAS GOVERNMENT.

90. No refund or renewal is admissible in the case of damaged or spoiled Court-fee adhesive stamps the value of which is less than one rupee. In cases where the value is not less than one rupee the Collector may, on delivery of the stamps, grant refund of their value after deducting one anna in the rupee or fraction of a rupee, whether the stamps were purchased in his district or elsewhere. Court-fee adhesive stamps attached to impressed sheets will, for purposes of refund, be treated as impressed stamps under paragraph 91 (*a*) *infra*. Court-fee stamps will be held to be spoiled or unfit for use within the meaning of this rule:—(1) When by accident happening to the same before they have been submitted to any Court or public officer they are rendered unfit for use; (2) or when because of some error in the drawing up or copying of any writing, to which the said stamps are affixed, the said writing is rendered of no avail; (3) or when any stamp has been filed in any Court or before any public officer, and cancelled accordingly, and it is afterwards discovered that such stamp has been required by mistake, and that a stamp of less value ought to have been required and certificate to that effect is issued by the said Court or public officer; (4) or when plaints written thereon have not been presented in any Court. (Board's Proceedings No. 2986, 8th August, 1884; Board's Proceedings No. 245, 10th May, 1890; Board's Proceedings No. 610-R., Mis., 7th April, 1915; Board's Proceedings No. 15|41-R., Mis., 7th January, 1915.)

In the case of stamps spoiled under clause (3), the Collector may grant a refund or renewal as the case may be, provided that application is made for such refund or renewal within six months after the date of the delivery to the holder of the certificate mentioned in the clause. The applicant should be required to produce the certificate with his application and it should be cancelled when the refund or renewal is allowed. (Board's Proceedings No. 71; 4th February, 1890; Board's Proceedings No. 15|41-R., Mis., 7th January, 1915.)

2. Stamps affixed to documents in excess of legal requirements should be punched and treated as spoiled stamps for purposes of refund when their value is not less than one rupee. The stamps themselves should not be returned but the party concerned will be given a certificate to the effect that he is entitled to receive back their value less discount within ninety days at a specified treasury. An advice should, at the same time, be sent to the officer in charge of the treasury. The certificate will become null and void after the expiry of the ninety days and refund will not be admissible thereafter. The renewal of the certificate or the issue of a fresh or duplicate one on any ground whatever is prohibited. (Board's Proceedings No. 158|567-R., Mis., 27th April, 1916; Board's Proceedings No. 20|408-R., Mis., 25th March, 1919.)

91. (*a*) When any person is possessed of impressed Court-fee stamps for which he has no immediate use, or which have been spoiled or rendered unfit or useless for the purpose intended, or

(*b*) When any person is possessed of two or more (or, in the case of denominations below Rs. 5, four or more) Court-fee adhesive labels *which have never been detached from each other* and for which he has no immediate use;

the Collector shall, on application, repay to him the value of such stamps or labels in money, deducting one anna in the rupee, upon such person delivering up the same to be cancelled and proving to the Collector's satisfaction that they were purchased by him with a *bona fide* intention to use them, that he has paid the full price thereof, and that they were so purchased or, in the case of impressed Court-fee stamps, so purchased, spoiled or rendered useless within the period of six months preceding the date on which they are so delivered. Provided that the Board of Revenue may, in special cases, allow refunds when application is made within one year from the date of purchase of the stamps or labels, or, also in the case of impressed Court-fee stamps, within one year from the date on which the stamps were spoiled or rendered useless. Applications in such cases should be submitted for the orders of the Board of Revenue if refund is recommended. In cases of special hardship, however, the Board of Revenue may sanction the refund of the value, or replacement, of detached as well as spoilt Court-fee adhesive labels provided the application is put in within the period prescribed above. (Board's Proceedings No. 434, 9th September, 1895; Board's Proceedings No. 206, 3rd March, 1888.)

1. In the case of impressed Court-fee stamps, the power vested in the Board has been delegated to Collectors of Districts. (Board's Proceedings No. 28|461-R., Salt, 6th February, 1908.)

2. The word "Collector" occurring in this Standing Order includes all Divisional Officers, Tahsildars and Deputy Tahsildars in independent charge. (Board's Proceedings No. 132|770-R., Mis., 9th June, 1909.)

92. The rules in paragraph 87 for the refund of the value of non-judicial stamps returned by licensed vendors apply equally to Court-fee stamps and labels, provided that in the case of adhesive Court-fee labels, their value may not be refunded, unless, in cases where the value of each label is not less than Rs. 5, there are at least two such labels which have never been detached from each other; and, in cases where the value of each label is less than Rs. 5, unless there are at least four such labels which have never been detached from each other. (Board's Proceedings No. 111, 14th March, 1893.)

This Standing Order allows no discretion to Collectors in the matter of refunding the value of detached Court-fee labels left by a deceased stamp vendor. (Board's Proceedings No. 750-R., Mis., 22nd May, 1915.)

93. (*i*) Certificates for the refund of Court-fees will be issued by the various Courts under sections 13, 14 and 15 of Act VII of 1870, an advice being sent to the Treasury Deputy Collectors to be filed in their offices as received.

(*ii*) Certificates for the refund of stamp-duty under the Code of Civil Procedure are to be sent by parties to the Treasury Deputy Collectors. They may be presented in person or sent by post. The holder of the certificates must state on the back of each certificate whether payment is to be made to himself or to any other person and at what treasury. No separate application or vakalatnama is necessary.

The Board held that a time limit need not be fixed for presentation of certificates granted by Civil Courts under section 13 of the Court-Fees Act for payment at the treasury, in view of the fact that the Act does not contemplate the forfeiture of the amounts covered by such certificates on account of the delay in presenting them and that Article 5 (*b*) of Civil Account Code would operate to prevent payments being made on certificates more than six months after the date of their issue, without a prior investigation of the claims by the Accountant-General. (Board's Proceedings No. 62-D., Mis., 11th January, 1918.)

(*iii*) The officer receiving the certificate will at once enface on it the date of presentation or receipt, and affix his signature to the enfacement.

The certificates, as they are received, will be sent to the Accountant in charge of the work, who will immediately enter them in a register (Form No. XXI) to be kept by him.

(*iv*) It will be the duty of the Accountant to compare the certificates with the daily advices received from the Courts. It will also be his duty carefully to examine the certificates, to detect any interpolations, erasures or other alterations, to satisfy himself of the genuineness of the signatures attached to it, and to see that the amount to be refunded has been correctly entered.

(*v*) If the Accountant discovers any irregularity, etc., in the certificate, or entertains any doubt regarding it, he will state his objections in a written memorandum and send it with the certificate to the Treasury Deputy Collector, who will dispose of the case according to its merits, or, if necessary, take the orders of the Collector. The Deputy Collector will invariably enter, on the memorandum of objections, his decision or opinion on the point and sign it with his usual signature.

(*vi*) If satisfied of the correctness of the certificate, the Accountant will write the necessary order for payment on the back of the certificate itself and, after obtaining the signature of the Deputy Collector, will send the certificate to the parties who are entitled to receive such payment by post "Bearing," if they are not present to receive it in person. The Accountant will note the date of delivery or despatch of the certificate in the register kept by him, referred to in paragraph (*iii*).

(*vii*) If any certificates be rejected in consequence of containing errors, they will be returned to the parties who hold or present them with an endorsement under the signature of the Deputy Collector specifying the cause of rejection, unless any circumstance renders it necessary to retain them.

(*viii*) When proper parties are not present to receive the rejected certificates, they will at once be sent to them by post bearing, and will not be allowed to accumulate among the public records till the parties come for them.

(*ix*) On payment being made at the Huzur Treasury, the receipts of the persons to whom the refunds are made will be taken on the back of the certificates, which will then be cancelled and forwarded by the Treasurer daily with his other accounts to the Head Accountant. The same course will be followed in the Taluk Treasuries, and the certificates will be sent to the Huzur with the Tahsildar's monthly accounts in support of the payments entered in them.

(*x*) The Head Accountant will, on receipt of the certificates, have their amounts compared with those entered in the several monthly accounts current, and forward the certificates to the Accountant-General along with the monthly Treasury Accounts.

1. When a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or officer, without summoning the defendant, rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated, together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described and that the value of the stamp should, in his opinion, be refunded. (Government of Madras Notification No. 358, 10th September, 1921, item (3).)

2. The refunds sanctioned by the Small Cause Court, Madras, are paid by the stamp-vendor of the Court and recovered by him from the Deputy Collector, Madras, on the production of the certificates granted by the Court. (Government Notification No. 404, 28th February, 1872.)

3. Refunds of the value of impressed Court-fee stamps may be granted in cases in which the plaint for filing a suit has been written on the stamp but has not been presented to the Court. (Board's Proceedings No. 198, 31st July, 1900.)

4. Process-service fees collected in excess can be refunded to the parties, vouchers in support of the charge being forwarded to the Accountant-General with the Court's contingent bill.

94. The following procedure should be adopted when applications for the refund or renewal of stamps are received, whether in regard to judicial or non-judicial stamps:—

Whenever adhesive stamps or stamped papers remaining in store or with the vendors become spoiled or rendered unfit for use, the Treasury Deputy Collector will prepare a list in Form No. LXI of all such stamps and submit it to the Collector who, after comparing the papers with the list, will then and there record his reasons for such proceeding, and will punch and mark as cancelled the stamps in such a manner as to prevent their being again sold or presented, and forward them to the Superintendent of Stamps with the monthly account in which the charge for the stamps in question is exhibited. In the case of unused stamped papers admitted for refund, the stamps should be cancelled only by sealing them with the office date seal over the endorsement on the back of the papers. Applications for the renewal or refund of value of any stamped paper, or any paper on which the stamp has been denoted by the Superintendent of Stamps, as being unused, damaged or spoiled shall be in Form No. LXI. The Collector, after satisfying himself of the propriety of the application, will destroy the stamps as above, and, if he sees fit, either authorize the issue of fresh stamps of similar or equal value as applied for, or will repay the value in money, according to the above rules. In refunding the value of stamps, the deduction of one anna need not be calculated on the value of each stamp, but on the total value of the stamps produced under each of the three following heads, *viz.*, Court-fee stamps, Non-judicial stamps and Court copy stamps. The Collector will certify the fact of the stamps being punched and marked as cancelled and of the authorized issue in substitution, or the refund of the value, at the foot of the application and forward it, after satisfying himself that the receipt portion thereof is duly stamped when necessary, together with the spoiled and unused stamps to the Superintendent of Stamps for destruction with the monthly accounts and with a covering memorandum in Form No. LXII in support of the entries made in the account for the papers. A separate entry will be made in the accounts of papers supplied in substitution of damaged papers presented by private parties in the *plus* and *minus* memorandum sent to the Accountant-General. (Board's Proceedings No. 85|1640-R., Mis., 9th December, 1918; Board's Proceedings No. 17|322-R., Mis., 8th March, 1919.)

1. These applications are exempt from Stamp duty. (Government of Madras Notification No. 358, 10th September, 1921, item (1).)

2. When stamped papers which have been spoiled or rendered unfit for use and consequently admitted for refund or renewal are returned for destruction, it will suffice if only the upper portions of the stamped paper are sent to the office of the Superintendent of Stamps with the stamps punched and marked as cancelled the lower halves being utilized as far as possible or destroyed in the offices admitting the stamps for refund or renewal as the case may be.

3. When an application is made for the payment, under Chapter V of the Indian Stamp Act, 1899 (II of 1899), of an allowance in respect of a spoiled or misused stamp, or on the renewal of a debenture, and an order is passed by the Collector sanctioning the allowance or calling for further evidence in support of the application, then if the amount of the allowance or the stamp given in lieu thereof is not taken, or if the further evidence required is not furnished, as the case may be, by the applicant within one year of the date of such order as aforesaid, the application shall be struck off and the spoiled or misused stamp (if any) sent to the Superintendent of Stamps for destruction. (Government of India Notification No. 1140-F., 14th August, 1914, Rule 20.)

4. When applications for the refund of the value of spoiled stamps are rejected in accordance with the rules laid down in the Stamp Manual, the words "refund refused" should be written across each stamp. In the case of stamps for which there is no immediate use (section 54 of the Stamp Act) the endorsement should be so made as not to cancel the value of the stamps and preclude their being used subsequently if the owner so desires. These instructions apply to Court-fee stamps as well as to non-judicial stamps. (Board's Proceedings No. 42, 24th February, 1899; Board's Proceedings No. 165-1105-R., Mis., 7th September, 1912; Board's Proceedings No. 325-R., Mis., 6th March, 1915.)

G. O. No. 1678, 6th July, 1866; No. 1401, 27th June, 1870; No. 4784, 9th July, 1870; No. 3553, 19th August, 1871; Notification, *Fort St. George Gazette*, p. 866, Mis., 20th March, 1872; No. 755, 9th May, 1873; 13th May, 1873; Circular of Government of India, Financial Department, No. 3767, 23rd October, 1873; Mis. 27th November, 1873; G. O. No. 1238, 5th November, 1873; No. 2442, 1st December, 1873; G. O., 14th January, 1874; Board's Proceedings No. 674, 25th March, 1874; G. O. No. 477, 21st April, 1874; 29th November, 1875; G. O. No. 1390, 28th June, 1879; No. 1391, 28th June, 1879; G. I. Resolution No. 125, 14th January, 1881; No. 217, 1st February, 1881; G. O. No. 1314, 25th November, 1882; No. 635, 19th May, 1883; Gazette Notification, p. 322, 19th May, 1883; No. 3558, 22nd November, 1883; 27th March, 1884; Nos. 1319 and 1328, 19th April, 1884; G. I. Resolution No. 2090, 10th July, 1884; G. O. No. 887, 25th July, 1884; Board's Proceedings No. 2986, 26th August, 1884; G. O. No. 1195-R., 3rd November, 1884; No. 4017, 22nd November, 1884; G. I. Resolution No. 2345, 6th December, 1884; No. 339, 2nd February, 1885; No. 1395, 9th May, 1885; No. 3027, 4th November, 1885; G. O. No. 174, 10th March, 1886; No. 1671, 26th July, 1886; No. 225, 7th February, 1887; No. 599, 25th March, 1887; G. O. No. 136, 11th February, 1888; Board's Proceedings No. 227, 25th April, 1892; Board's Proceedings No. 350, 1st July, 1892.

NOTE.—For Rules made by the other High Courts, *see* the Rules and Orders of the respective High Courts.

XII.—RULES FOR THE RECOVERY OF COURT-FEES IN PAUPER SUITS.

100. The course to be pursued for the recovery of stamp-duty in pauper suits is as follows:—

On receipt of a copy of the decree from the Court, which will be communicated to the Collectors of the districts concerned within a month after the passing of judgments, it will be sent to the Tahsildar with instructions to ascertain, in the first instance, whether the party liable is able to pay. If he is able to pay, the Government vakil will apply by petition to the Court, under the Civil Procedure Code, to recover the amount by the attachment and sale of the party's property. The application will contain the particulars required by the Civil Procedure Code as far as they are

applicable to the case of execution of a decree as to costs only, and a request for the payment of the costs of the application including vakil's fee. The application may be presented at any time after the passing of the decree, whether the decree-holder has applied for execution or not. (Board's Proceedings No. 127, 31st May, 1899.)

101. When on enquiry it is found that the prospects of recovering the stamp-duty awarded in pauper suits are slender, or when owing to lapse of time the claim has been extinguished, application should be made to the Board for sanction to write off the demand as irrecoverable. A separate application is not needed in each case. All can be included in one statement, Form No. LXXIX-A, and be submitted quarterly.

102. Collectors are at liberty not to apply to Civil Courts for the execution of the decree to recover the stamp-duty in pauper suits in cases in which the collection of the amount cannot be effected without depriving the parties liable of the actual means of subsistence. Such amount may be dealt with under paragraph 101. (No. 457, 26th March, 1873; High Court's Proceedings, 23rd April, 1873; No. 931, 29th March, 1882; No. 1126, 24th April, 1882; Board's Proceedings No. 368-R., Mis., 15th March, 1915.)

103. On receiving notice under rule 6, Order 33 of the Code of Civil Procedure (Act V of 1908) regarding an application to sue *in forma pauperis*, Collectors should institute the necessary inquiries as to the real status of the applicant, and should they feel satisfied that he is a real pauper, they will not dispute such application.

104. But if, on such enquiry, there appear to be circumstances in the applicant's case which *prima facie* disentitle him to sue as a pauper, the Collector should place himself in communication with the defendant or respondent in the case, and if such defendant or respondent is disposed to dispute the application, the Collector by co-operating with him and employing the same vakil may effectually oppose the application.

105. When a defendant or respondent is not inclined to oppose the application, and when the Collector is of opinion that the application should be opposed, he will employ a vakil and cite witnesses. Such cases will naturally be rare, and the regulation fee for the vakil and other costs incurred may be sanctioned by the Collectors. In cases where the fees and the costs do not exceed the costs awarded by the Court and such costs have been advanced by the vakil himself, the Collector is authorized to permit him to deduct from the costs recovered his fees and the costs incurred by him. The transaction must be shown in the accounts, on receipt of advice from the vakil, in accordance with Rule 1, Chapter I, Civil Account Code. (Board's Proceedings No. 482, 1st September, 1892.)

106. When a person is permitted to sue as a pauper, it is not necessary that a vakil should be employed to watch the further proceedings in the case; but should circumstances subsequently come to light, which show that the indulgence granted to the plaintiff or appellant was one to which he was not entitled, the Collector will act in co-operation with the defendant or respondent in the manner directed in paragraph 104, or independently as laid down in paragraph 105. (G. O. No. 2526, J.D., 30th September, 1879; Board's Proceedings No. 813, 3rd December, 1887.)

107. Quarterly returns in Form LXXIX-A showing the progress made in the collection of the balance of stamp-duty awarded to Government in pauper suits should be submitted by all Collectors to the Board. The returns should be despatched on or before the last day of the month following the quarter. (Board's Proceedings No. 345, 17th November, 1898; Board's Proceedings No. 2374, Mis., 29th May, 1900; Board's Proceedings

No. 2747, Mis., 19th June, 1900; Board's Proceedings No. 79, 6th April, 1900.)

Collectors should add at the foot of the returns a certificate to the effect that the collections given in the returns agree with the treasury accounts, and should explain differences, if any. (Board's Proceedings No. 144|1711-R., Mis., 14th November, 1917.)

XIII.—RULES RELATING TO COPIES.

(H. C. Notification, dated 12th March, 1917.)

1. A fixed number of copyists shall be enrolled for each Court of civil jurisdiction. But, where two or more Courts are situated at the same station (as for instance, a District and District Munsif's Court, a District, Subordinate and District Munsif's Court, or a Subordinate and District Munsif's Court), and where the High Court considers it desirable, a fixed number of copyists shall be enrolled in a central office attached to one of such Courts for the preparation of copies for all such Courts at that station.

2. The copyist establishment, inclusive of examiners, readers, superintendent, assistant superintendent, if any and attender or superior peon, if any, to be entertained for each office together with a provision for contingencies shall be fixed by the District Judge, subject to the orders of the High Court.

3. It shall be competent to District Judges, the Judge, City Civil Court, and the Chief Judge, Court of Small Causes, Madras, without the previous sanction of the High Court to employ temporary copyists, examiners and readers when circumstances of special emergency render such a course necessary. Such temporary establishments shall be paid out of the contingent provision.

4, 5. Relate to copyist establishment. [*Omitted.*]

NOTE.—(1) Copyists of the Judicial Department are Government servants as defined in rule 1 of the Government Servants' Conduct Rules. [*G. O. No.* 2860, *Law (General), dated* 11*th October,* 1924; *H. C. Dis., No.* 1864|24.]

(2) The Government considers that copyists should not be regarded as belonging to the "Superior Service" for purposes of the note at the end of Article 1 of the Public Service Notification. (*G. O. No.* 3137, *Law (General), dated* 10*th November,* 1924; *H. C. Dis. No.* 2167|24.)

6. Where a central office has been established and where the funds allow, a superintendent, assistant superintendent and one or more examiners and readers will be appointed. Where the District Judge thinks it necessary, and the funds allow of the expenditure, an attender or superior peon may also be appointed.

(*a*) Where no central office has been established and where the copyists are two or more in number, an examiner and a reader may also be appointed.

7. Registers in the forms given in the Appendix (*vide* Civil Registers Nos. 25-29, Appx. II, Pt. II of Vol. II), shall be opened and regularly kept in the case of a central office by the superintendent and in any other case by the examiner, or where there is no examiner, by such officer as the Court shall direct. These registers shall be examined once every week, in a central office, by such officer as the District Judge shall direct, and in any other case by the head ministerial officer of the Court.

8. In the case of every application (which is not defective) and of every application allowed by the Judge under Rule 13 of the Consolidated Copyists Rules, 1917, it shall be the duty of the superintendent, examiner

or such other officer as the Court may direct, forthwith to forward the application with Register B (Civil Register No. 26), to the clerk in charge of the records of which copies are applied for, who shall affix his initials in acknowledgment of receipt in the appropriate column of that register. The original records shall thereupon be as once put up with the application and sent to the superintendent, examiner or other officer, as the case may be. In no case is such application to be returned to the copyist department without the records, unless the originals are not forthcoming, or unless the application is defective, in either of which events the applications will be returned to the superintendent, examiner or other officer as the case may be, with an appropriate certificate endorsed thereon, attested by the returning clerk's initials. This certificate shall thereupon be signed by the superintendent, examiner or other officer, as the case may be, and the application returned to the applicant, a note of the same being made in Register A (Civil Register No. 25).

9. All stamp papers deposited shall at once be entered in Register A and the preparation of the copies of all documents applied for or such of them as admit of being copied in full on the stamp papers deposited shall (as far as possible) be undertaken in accordance with the serial order of applications, except when the presiding officer of the Court, or, in case the application is to a District Court or a Subordinate Judge's Court, the Judge or chief ministerial officer of such Court makes a special order for precedence as regards any particular application. Provided always that in complying with an application for copies, copies of decrees and judgments, if any, comprised in the application shall have precedence over copies of other documents applied for.

10. When the copy applied for has been transcribed by the copyist, it shall be compared by the examiner or, where there is no examiner, by such officer as the Court shall direct, aided by the reader or by some one of the copyists; but in no case shall a copy be read to the examiner, or the examination in any way assisted in, by the copyist who prepared the copy. Each page must be initialled at foot by the examiner or other officer aforesaid.

11. The superintendent, examiner or such other officer as the Court may direct, shall be responsible that the work of copying and the work of reading to the examiner are distributed as equally as possible amongst the enrolled copyists. To ensure copies being fully and legibly written, as many sheets as the presiding officer from time to time fixes according to the congestion of work may be given to each copyist per day. At the close of each day, all original papers and all copies not delivered to the parties, as well as all stamp papers not yet used for copies, shall be taken back from the copyists and secured for the night by the superintendent, examiner or such other officer as the Court may direct.

NOTE.—There is no objection to allowing typist-copyists to earn twice as much as the ordinary copyists in the office. (*H. C. Dis. No.* 211, *dated* 1*st March,* 1904.)

12. When the copies are ready for delivery, the original shall be returned to the record-keeper or the clerk from whom they were obtained, and his initials taken in the appropriate column of Register B.

14. [Omitted for the same reason as for Rules 4 and 5 above.]

15. The present two anna stamp paper will be of 117 words. Stamp papers surcharged "three annas" will be of 175 words and will be sold for three annas. These charges in each case include, besides the cost of the paper on which the stamp as surcharged is impressed, the cost of copying, examining and certifying to the correctness of the copy.

16. The amount of allowances, if any, due to each copyist in excess of the minimum prescribed by Rule 13 (*d*) ***supra*** shall for each month be

ascertained from and accounted for in Register D (Civil Register No. 28). For the purpose of calculating such extra payments, if any, the hire debitable in Register D on account of the copyists' work shall be at the rate of 15 pies for 150 words or a fraction of 150 words. But extra allowances under this rule shall always be subject to a recovery being made up to the amount of any excess paid to the copyist in either or both of the two last working months in order to make up his minimum salary.

Every calendar month in the year, except the two months in which some part of the annual recess falls, shall be treated as a working month for the purpose of this rule. If the recess of a Court extends into three months, the two months in which there is the smallest number of working days shall alone be reckoned as the two non-working months for that Court.

17. Stationery, inclusive of pens, ink, pencils, blotting paper, rulers, etc., will be furnished to the copyist establishment from the supply received by the Court on indent from the Superintendent of Stationery. The estimated cost of such stationery will be debited monthly in Register E (Civil Register No. 29) to the copyist establishment.

18. Service on the copyist establishment as superintendent, assistant superintendent, examiner, reader or attender shall qualify for pension but not service as a copyist.

19. Monthly statements of the receipts and charges shall be forwarded in the case of a Court not connected with a central office other than a District Court, to the District Judge and a compiled statement for all the Courts of the district shall be forwarded by the District Court to the High Court. Where it appears from the monthly statements that the receipts on account of copies do not fully cover the charges or that the number of copyists is unnecessarily large, it will be the duty of the District Judge to revise the copyist establishment so as to avoid loss to Government.

20. (*a*) The above rules apply, with the exception stated in Rule 22 *infra*, to all copyists' establishments in, and to all copies to be furnished by, District and Sessions Courts, the City Civil Court, Subordinate Judges' Courts and District Munsifs' Courts and also to the Presidency Court of Small Causes. They do not apply to the copyists of, or to the copies furnished by, the Courts of Magistrates or Revenue officers.

(*b*) In the case, however, of the City Civil Court and the Presidency Court of Small Causes, Madras, the following special scales of pay shall apply :—[*Omitted.*]

21. (1) The above rules apply, *mutatis mutandis*, to the copyist establishment of the High Court, Appellate Side, provided that there shall be—[Details relating to the establishment omitted].

The Registrar shall perform the acts and exercise the powers conferred on District Judges in Rules 2, 3, 6, 7, 10, 11 and 19 *supra*, and Rule 8 of the Consolidated Copyists Rules, 1917.

(2) Copies of judgments required for the use of the Law Reporter in the preparation of the Madras series of the Indian Law Reports should be granted free of cost.

[*N. B.*—Clause 2 was inserted by G. O. No. 2911, Home J., dated 10th December, 1919; *H. C. Dis. No.* 94 *of* 1920.]

22. Nothing contained in the above rules shall apply to printed copies or to copies which, under any provision of law for the time being in force, the Courts are required to grant free of cost. As to printed copies separate rules have been made. Copies to be granted free of cost shall be made by the regular establishments of the Courts.

Note.—As regards the Rules made by the other High Courts, *see* Rules and Orders made by the various High Courts.

APPENDIX V.

THE SUITS VALUATION ACT.

LEGISLATIVE PROCEEDINGS AND SELECT COMMITTEE'S REPORT.

I

Introductory Speech.

The Hon'ble Mr. Ilbert also moved for leave to introduce a Bill to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto. He said:

"This is a little Bill of no great importance, and its main object is to provide means for determining the value of land where it is necessary to ascertain that value for the purposes of jurisdiction.

"This institution fee payable under the Court-Fees Act in suits for the possession of land is computed according to the value of the land, and in order to facilitate this computation the Act lays down certain rules of a somewhat arbitrary character, under which the value of the land is declared to be a particular multiple of the revenue charged or chargeable upon it. Under the various Civil Courts Acts the jurisdiction of the inferior Courts is usually limited by reference to the value of the subject-matter of the suit. One of these Acts—the Madras Civil Courts Act of 1873—directs that, where the subject-matter of a suit is land, its value shall, for the purposes of jurisdiction, be fixed in the manner provided by the Court-Fees Act for the purpose of determining the institution fee. The other Civil Courts Acts do not contain any similar direction, but it appears to be a very common practice in all the provinces to treat the value of land for Court-fee purposes as being also its value for jurisdictional purposes. The practice is not strictly warranted by law, and is opposed to some rulings of the Bombay High Court, but there is a great deal to be said in favour of it on the score of convenience.

"However, under the rules laid down in the Court-Fees Act, land is, in many parts of the country, including the Madras Presidency, assessed at something very much below its net market-value. This does not much matter for the purposes of Court-fees, because the Government has not the slightest intention or desire to increase the amount of those fees; on the contrary, it would reduce them if the financial situation permitted. But the Madras Government tells us that the effect of applying the Court-fees rules for the purpose of determining jurisdiction is to bring within the jurisdiction of some of the inferior Courts land-suits of a class which those Courts were not intended, and indeed are not qualified, to deal with; and accordingly that Government desires to substitute some other rules which would bring out a valuation more in accordance with the facts. But unfortunately we are not in a position to touch the Court-Fees Act at present, and we do not desire to interfere with the practice which is observed in provinces other than Madras, unless and until it is shown to produce inconvenient results. Under these circumstances we propose to meet the wishes of the Madras Government as far as we can by authorising Local Governments, after consulting their High Courts, and with the previous sanction of the Government of India, to frame rules for determining the value of land for jurisdictional purposes. If the Madras Government thinks fit to frame such rules, the rules will, when they come into force, supersede the provisions of the Madras Civil Courts Act to which I have referred. Whether other Local

Governments will consider it worth while to frame such rules on the subject I do not know, but, if they do, the rules framed by them may, whenever the time comes for amending the Court-Fees Act, be of material assistance in helping the Government of India to lay down principles of computation which will bring out results more in accordance with the facts than those embodied in the old Act. I repeat, however, that there is no intention to do anything which will directly or indirectly raise the amount of institution-fees payable in suits relating to land.

"This is the main object of the Bill. The Bill contains one or two other minor provisions to which it is not necessary for me to refer at the present stage."

The motion was put and agreed to.

The Hon'ble Mr. Ilbert also introduced the Bill.

II

The Select Committee's Report.

1. We have divided the Bill into three Parts, of which Part I deals with suits relating to land and Part II with other suits, Part III containing supplemental provisions.

Part I is to be brought into force by notification of the Governor-General in Council, and it is proposed that Part II and the material portion of Part III come into force on the first day of July next.

2. We have excepted from the operation of section 8 (section 4 of the Bill as introduced) the suits to which paragraph ix of section 7 of the Court-Fees Act relates. In a suit for foreclosure or sale the principal and interest due under the mortgage-deed represent the value of the suit for purposes of jurisdiction, while the value for the computation of Court-fees is the principal only.

3. We have added to the Bill a section in the term of section 32 of the Punjab Courts Act, 1884, and have proposed to repeal that section of that Act.

4. We have so amended section 11 (section 5 of the Bill as introduced) as to give the appellate Court a discretion as to proceeding with an appeal in a suit which was instituted in a Court without jurisdiction as regards the value, and we have made the provisions of the section applicable to an appellate Court apply also to a Court exercising revisional jurisdiction.

* * * *

5. We do not think that the measure has been so altered as to require re-publication, and we recommend that it be passed as now amended.

*If we are to have an Act like this (the Bombay authorities do not see the necessity for one, and I entirely agree in their views), it should be either sumltaneous with or follow the amending Court-Fees Act; because the object of the Act is "to prescribe a simple mode of valuing suits" and that will depend on the rules laid down. These rules cannot be laid down now, because it is said we have no data for framing them; and they will take a long time to collect. If so, there can be no harm, it seems to me, in postponing the passing of the Act until we get all the materials before us. At present we are merely doing some administrative work; the real legislative work will be done by one of the executive departments. To such a procedure I am opposed on principle.

In other respects I agree with my colleagues.

V. N. Mandlik.

III

Speech on presentation of Select Committee's Report.

The Hon'ble Mr. Scoble presented the Report of the Select Committee on the Bill to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto.

The Secretary, with the permission of His Excellency, the President, read the following remarks by the Hon'ble Rana Shankar Baksh Singh, as the Hon'ble Member would not be able to attend the next meeting of the Council.

"My Lord—With Your Lordship's permission I beg to offer a few remarks on the Bill now before Your Excellency's Council.

"There is nothing in the present Bill which is open to objection or which calls for criticism.

"The main object of the Bill seems to be to obviate difficulties in estimating the value of the subject-matter of suits for the purpose of determining the jurisdiction of Courts with respect thereto. It not unfrequently happens that the lower Court, under-estimating the value of the subject-matter of a suit brought before it, considers that it falls within its jurisdiction, while on appeal the appellate Court holds that the lower Court had no jurisdiction and reverses its decision solely on this ground. The result is that all the proceedings gone through and the evidence produced by the parties concerned are rendered useless, and the case has to be re-tried by a Court of competent jurisdiction. It also happens that the plea of want of jurisdiction, although it was not put forth in the lower Court, is urged in the appellate Court which—finding from the record of the case that in trying a suit the value of the subject-matter of which was too high, the lower Court had really exceeded the limits of its jurisdiction—sets aside its decision, and the whole proceeding is quashed.

"Sometimes the case is remanded by the appellate Court to be re-tried with special reference to the value of the subject-matter, and then, finding that the suit as regards the value of the property in dispute was beyond the jurisdiction of the lower Court, the appellate Court cancels the whole proceeding and directs the case to be re-tried by a Court of competent jurisdiction.

"These, my Lord, are the most obvious instances in which the law, as it now stands, fails to accomplish its object, and to remedy such defects, legislation on the lines of the present Bill seems to be necessary.

"The Bill gives Local Governments the power to make rules regarding the mode of estimating the value of the subject-matter of suits. This is necessary, because different rates prevail, not only in different provinces, but in the different parts of the one and the same province, and because no definite provisions could be made in the Bill itself for estimating the value of the subject-matter of suits in different provinces or parganas for the purpose of determining the jurisdiction of Courts, more especially the value of land is always fluctuating, which makes it all the more necessary to invest Local Governments with the power to make rules after duly considering the different local conditions and the various and constantly varying rates prevailing in different localities, and from time to time to alter or modify the rules thus made, so as to make them applicable to land of different descriptions and capacities and to other property of which the value is always rising and falling.

"The present Bill, as amended by the Select Committee, fairly promises to fulfil the object with which it has been framed and brought before this Hon'ble Council."

RULES FOR THE VALUATION OF CERTAIN CLASSES OF SUITS.

LAHORE.

MANNER OF DETERMINING THE VALUE OF SUITS FOR PURPOSES OF JURISDICTION.

(*Section* 9, *Suits Valuation Act*, 1887.)

Rules made by the High Court, with the previous sanction of the Local Government under the powers conferred by section 9 of the Suits Valuation Act, VII of 1887, and all other powers in that behalf, for determining the value of the subject-matter of certain classes of suits, for the purposes of jurisdiction, which do not admit of being satisfactorily valued, and for the treatment of such classes of suits, as if their subject-matter were of the value as hereinafter stated.

RULES.

1. (*i*) Suits in which the plaintiff in the plaint asks for a decree against the other party to the alleged marriage, either alone, or with other defendants, for restitution of conjugal rights;

(*ii*) Similar suits for a decree establishing, or annulling or dissolving a marriage;

(*iii*) Suits in which the plaintiff in the plaint asks for a decree establishing a right to the custody or guardianship of a minor, including guardianship for the purposes of marriage;

(*iv*) Suits in which the plaintiff in the plaint asks for a decree establishing or annulling an adoption, including under the expression "adoption" the customary appointment of an heir—

(*a*) for the purposes of the Court-Fees Act, 1870, suits of classes (*i*) with the exception noted below (*ii*), (*iii*) and (*iv*), Rs. 200;

(*b*) for the purposes of the Suits Valuation Act, 1887 and the Punjab Courts Act, 1918 as amended, suits of classes (*i*) and (*ii*)—Rs. 1,000; suits of classes (*iii*) and (*iv*)—such sum exceeding Rs. 500 and not exceeding Rs. 1,000 as the plaintiff shall state in the plaint.

Explanation 1.—Classes (*i*) and (*ii*) do not include petitions under any special Act relating to the dissolution of marriage.

Explanation 2.—Class (*iii*) does not include proceedings under Act IX of 1861[1] or Act XIII of 1874.

2. Suits by a plaintiff, during the lifetime of a person alleged to have a restricted power of alienation in respect of immoveable property, in which the plaintiff in the plaint seeks to have an alienation of immoveable property made by such person declared to be void except for the life of such person or for some other determinate period.—

Value.—(*a*) For the purposes of the Court-Fees Act, 1870,—as determined by that Act.

(*b*) For the purposes of the Suits Valuation Act, 1887, and the Punjab Courts Act, 1918 (as amended),—

(*i*) When the alienation is by a written instrument which declares the value of the interest purporting to be created, or the amount of the consideration for which the alienation is made—such value or amount.

(*ii*) In other cases—the market value, at the date of institution of the suit, of the property alienated; subject in either case to the provisions of Part I of the Suits Valuation Act, 1887, and of the rules in force under the said part, so far as those provisions are applicable.

3. Suits in which the plaintiff in the plaint asks for accounts only; not being suits to recover the amount which may be found due to the plaintiff

[1] Since repealed by Act VIII of 1890.

on taking unsettled accounts between him and the defendant, or suits of either of the kinds described in Order 20, Rule 13, of the Code of Civil Procedure,—

Value—(*a*) For the purposes of the Court-Fees Act, 1870,—as determined by that Act.

(*b*) For the purposes of the Suits Valuation Act, 1887, and the Punjab Courts Act, 1918 (as amended),—Such amount exceeding Rs. 100 and not exceeding Rs. 500, as the plaintiff may state in the plaint.

4. Suits in which the plaintiff in the plaint seeks to establlish or to negative any right hereinafter mentioned, with or without an injunction, and with or without damages, namely;—a right of way; a right to open or maintain or close a door or a window, or a drain, or a water shoot (parnala); a right to or in a water-course or to the use of water; a right to build, or raise or alter or demolish a wall; or to use an alleged party-wall or joint staircase,—

Value—(*a*) For the purposes of the Court-Fees Act, 1870,—as determined by that Act.

(*b*) For the purposes of the Suits Valuation Act, 1887, and the Punjab Courts Act, 1918 (as amended),—

(*i*) damages are not claimed,—such amount exceeding Rs. 100, and not exceeding Rs. 500, as the plaintiff may state in the plaint;

(*ii*) if damages are claimed,—the amount of such damage increased by Rs. 100.

5. Suits in which the plaintiff in the plaint seeks to set aside an award, and aplications registered as suits under the provisions of Schedule II, paragraphs 17 and 18, of the Code of Civil Procedure (to file an agreement to refer to arbitration), or of Schedule II, paragraph 19, of the said Code (to file an award), when or so far as the award or the agreement relates to property;—

Value—(*a*) For the purposes of the Court-Fees Act, 1870,—as determined by that Act.

(*b*) For the purposes of the Suits Valuation Act, 1887, and the Punjab Courts Act, 1918 (as amended),—the market-value of the property in dispute, subject to the provisions of Part I of the Suits Valuation Act, 1887, and of the rules in force under the said Part, so far as those provisions are applicable.

6. The foregoing rules are subject to the following explanations:—

(*i*) the term "plaint" includes an amended as well as original plaint;

(*ii*) a suit falling within any of the above descriptions is not excluded therefrom merely by reason of the plaint seeking other relief in addition to that described in any of the foregoing rules.

MANNER OF DETERMINING THE VALUE OF LAND FOR PURPOSES OF JURISDICTION IN CERTAIN CLASSES OF SUITS.

The following rules made by the Local Government, under the power conferred by section 3 of the Suits Valuation Act, 1887, and published as Punjab Government Notification No. 255, dated the 4th March, 1889, for determining the value of land for purposes of jurisdiction in the suits mentioned in the Court-Fees Act, section 7, paragraphs v and vi, and paragraph x, clause (*d*), are republished for information and guidance:—

1. In suits for the possession of land the value of the land, for purposes of jurisdiction, shall be held to be as follows:—

(*a*) Where the land forms an entire estate, or a definite share of an estate paying annual revenue to Government or forms part of such an

estate, and the annual revenue payable for such part is recorded in the Collector's register and such revenue is permanently settled,—sixty times the revenue assessed on the land.

(*b*) Where the land forms an entire estate, or a definite share of an estate paying annual revenue to Government, or forms part of such estate and is recorded as aforesaid and such revenue is settled but not permanently,—thirty times the revenue so payable.

Explanation to clause (*b*).—Where the land is a fractional share or a portion or part of an estate, and the land revenue payable for such part is recorded in the Collector's register, and such revenue is not permanently settled, the value for purposes of jurisdiction shall be held to be thirty times such portion of the revenue recorded in respect of that part as may be rateably payable in respect of the share or portion.

Illustrations.—(1) In a suit for possession of a one-third share of the entire holding of 10 ghumaos forming part of an estate and recorded as paying Rs. 20 annual revenue, the value of the land for the purposes of jurisdiction is one-third of thirty times Rs. 20 or Rs. 600.

(2) In a suit for possession of 1 ghumao out of the same holding, the value of the land is one-tenth of thirty times Rs. 20 or Rs. 600.

(*c*) Where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue, and net profits have arisen from the land during the year next before the date of presenting the plaint,—fifteen times such net profits. But where no such net profits have arisen therefrom,—the market-value.

(*d*) Where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and does not come under clauses (*a*), (*b*) or (*c*) of this rule,—the market-value of the land.

(*e*) Where the subject-matter is a garden,—the market-value of the garden.

2. In suits to enforce right of pre-emption in land the value of the land, for the purposes of jurisdiction, shall be calculated by the preceding rules.

3. When the land or interest in suit falls partly under one and partly under another of the classes enumerated in rule 1, the value of the land in each class shall be separately calculated.

4. In the application of the above rules the word "land" includes all such right, *e.g.*, shares in village common and in wells are as accessory to the land in suit and the word 'revenue' as used in the preceding rules when applied to land irrigated from canals, shall be held to include owner's rate for the year next before the date of presentation of plaint, or half the occupier's rate for the same period in cases in which no owner's rate is chargeable.

5. In suits for specific performance of an award so far as the award relates to land, the market-value of the land.

6. Suits relating to a life-interest in land and suits relating to an occupancy right shall, for purposes of jurisdiction, be deemed to be of half the value provided for suits for possession under rule 1.

INSTRUCTIONS ON THE SUBJECT OF THE SUITS VALUATION ACT, VII OF 1887, AND THE RULES MADE THEREUNDER, FOR DETERMINING THE VALUE OF CERTAIN CLASSES OF SUITS FOR PURPOSES OF COURT-FEES AND JURISDICTION.

The attention of all Civil Courts is drawn to the following instruction on the subject of the provisions of the Suits Valuation Act, VII of 1887, and the rules and directions made thereunder, contained in Chapters X and XI of this Volume.

2. Part I of the Act was extended to this province by Government of India, Home Department, Notification No. 210, dated the 20th February, 1889, and the Local Government has made rules under section 3 of the Act determining the value of land and of certain interests therein, for purposes of jurisdiction in the suits mentioned in the Court-Fees Act, 1870, section 7, paragraphs v and vi and paragraph x, clause (*d*), which are republished as Chapter XI of this Volume.

3. No restrictions under section 3, sub-section (2), of the Act have been imposed as to the classes of land to which the rules apply, or as to the local extent of their operation, and they apply therefore to all land generally throughout the province, whether assessed with land revenue or not.

4. Section 4 of the Suits Valuation Act provides that, where a suit mentioned in the Court-Fees Act, section 7, paragraph iv, or Schedule II, article 17, relates to land or an interest in land, of which the value has been determined by the rules made under section 3, the amount at which the relief sought in the suit is valued for purposes of jurisdiction shall not exceed the value of the land or interest as determined by those rules. The suits falling under section 7, paragraph vi, of the Court-Fees Act, are certain suits in regard to which the plaintiff is required to state the amount at which he values the relief sought in the plaint. Where the value so stated exceeds the value of the land or interest therein as fixed by the rules, the latter and not the former must be regarded as the value for purposes of jurisdiction. The suits specified in Schedule II, Article 17, of the Court-Fees Act, are those for which it is difficult to fix a correct valuation, and a fixed Court-fee of Rs. 10 is accordingly levied in these cases. Where any such case relates to land or any interest in land, the value for purposes of jurisdiction will be the value of the land or interest as fixed by the rules.

5. The suits falling under the Court-Fees Act, section 7, paragraphs i, ii, iii, vii, viii, ix, x (*a*), (*b*), (*c*), and xi (*a*) to (*f*) inclusive, are, with one or two exceptions, either such as are subject to an *ad valorem* Court-fee, in regard to which the value for the purposes of computing the Court-fee and the value for the purpose of determining jurisdiction are, under section 8 of the Suits Valuation Act, 1887, the same; or suits dealt with by directions made by the High Court under section 9 of the Act.

6. In order to guard against mistakes as to the value of suit for purposes of jurisdiction and of Court-fees, respectively, every plaint ought upon its face to show the value for purposes of jurisdiction as well as the value for the purpose of computing Court-fees. The former information is requisite in order that the Court may determine whether the plaint should be returned under Order 7, Rule 10, of the Code of Civil Procedure when a plaint omits to disclose the value of the suit for the purposes of jurisdiction, the person presenting it should be questioned, and his answer recorded on the plaint, unless he consents to amend it then and there.

7. As special care is necessary with respect to cases falling under the provisions of section 7, paragraph iv, and Schedule II, Article 17, of the Court-Fees Act, in valuing suits for the purposes of jurisdiction of Court-fees, a schedule showing the value in each class of these cases has been prepared to guide the Courts in fixing the value in particular cases, and the opportunity has been taken to prepare an exhaustive schedule following the classifications of suit in the Court-Fees Act. It must be clearly understood, however, that this schedule in itself has no legal force and that it is merely intended for ready reference by the Courts in dealing with questions of value. An examination of the schedule will show that it is only in a few cases in which it is not possible to value the suit for purposes of jurisdiction, either by the actual value of the subject-matter or by reference to the pro-

visions of sections 4 and 8 of the Suits Valuation Act, and the rules under section 3, and directions under section 9 of the Act.

8. There is no express provision in the Suits Valuation Act, 1887, in regard to the classes of suits mentioned below and they do not admit of being disposed of by rules under Part I, nor are they dealt with by directions under Part V of the Act. The valuation of such suits, therefore, must be left to judicial decision, as occasion arises. The suits are,—

suits for houses;

suits for pre-emption in respect of houses;

suits for removal of attachment of houses;

suits by or against mortgagors or mortgagees as such;

suits falling under Schedule II, Article 17, clause (*iv*), which are not provided for by the rules under section 3 or directions under section 9 or by section 4 of the Suits Valuation Act;

suits falling under section 7, sub-section (*x*), clause (*d*), of the Court-Fees Act, and relating to property other than land.

9 In the cases of some other classes of suits, such as those falling under Articles 14 and 20 of Schedule II of the Court-Fees Act, or suits relating to marriage and minority, the law allows no choice of the Court in which proceedings must be taken. There is, therefore, no necessity, to fix any valuation for the purposes of determining jurisdiction, while for purposes of Court-fees they are sufficiently dealt with by the Court-Fees Act, 1870.

SCHEDULE SHOWING THE VALUE OF SUITS FOR PURPOSES OF COMPUTING COURT-FEES AND OF DETERMINING THE JURISDICTION OF THE COURTS, RESPECTIVELY.

1	2	3	4	5
Value of suits for the purpose of computing Court-fees under the Courts fees Act, 1870.			Value for the purpose of determining the jurisdiction of the Court under the Suits Valuation Act, 1887, and the Rules and directions made thereunder.	
Court-fees Act.	Nature of suit.	Value of for court-fee purposes.	Suits Valution Act and Rules.	Value for purposes of Jurisdiction.
Section 7, paragraph i.	In suit for money.	*Ad valorem*, according to the amount claimed.	Section 8.	The same as in column 3.
Section 7, paragraph ii.	In suits for maintenance and annuities or other sums payable periodically.	*Ad valorem*, on ten times the amount claimed to be payable for one year.	„	„
Section 7, paragraph iii.	In suits for moveable property other than money where the subject-matter has a value.	According to such value at the date of presenting the plaint.	„	„
Section 7, paragraph iv.	In suits— (*a*) for moveable property where the subject-matter has no market value.	*Ad valorem*, according to the amount at which the relief sought is valued in the plaint or memorandum of appeal; such value must be stated.	„ (*a*)	(*a*) The value of the relief sought as stated in the plaint.

	(*b*) to enforce the right to share in any property on the ground that it is joint family property:	" "	(*b*) As regards land—section 4 and rules under section 3. In other cases—the same as in (*a*).	(*b*) The value of the relief sought as stated in the plaint, but not exceeding the value of the land under the rules. The same as in (*a*).
	(*c*) to obtain a deelaratory decree or order where consequential relief is prayed:	*Ad volorem*, according to the amount at which the relief sought is valued in the plaint or memorandum of appeal; such value must be stated.	(*c*) The same as in (*b*), subject to rule 2, Chapter X of this volume and section 9 of the Suits Valuation Act.	(*c*) The same as in (*b*) subject to rule 2, Chapter X of this volume and section 9 of the Suits Valuation Act.
	(*d*) to obtain an injunction.	" "	(*d*) Ditto. subject to rule 4, Chapter X of this volume and section 9 of the Suits Valuation Act.	(*d*) The same as in (*a*) subject to rule 4, Chapter X of this volume and section 9.
	(*e*) for a right to some benefit (not herein otherwise provided for) to arise out of land; and	" "	(*e*) The same as in (*a*).	(*e*) The same as in (*a*).
	(*f*) for account.	" "	(*f*) The same as in (*a*) subject to rule 3, Chapter X of this volame and section 9.	(*f*) The same as in (*a*) subject to rule 3, Chapter X of this Volume and section 9.
Section 7, paragraph v.	In suits for the possession of land, houses and gardens according to the value of the subject-matter; and such value shall be deemed to be— Where the subject-matter is land, and			
	(*a*) where the land forms on entire estate or a definite share of an estate paying a nnual revene to Government;	*Ad valorem*, on ten times the revenue payable.	(*a*) Section 3, Suits Valuation Act and rule I clausses (*a*) and (*b*) and rules 3 and 6	(*a*) If the revenue is permanently settled sixty times the revenue assessed on

1	2	3	4	5
Value of suit for the purpose of computing Court-fee under the Court-fees Act, 1870.			Value for the purpose of determining the Jurisdiction of the Court, under the Suits Valuation Act, 1887, and the Rules and directions made thereunder.	
Court-fees Act.	Nature of suit.	Value of for court-fee purposes.	Suits Valuation Act and Rules.	Value for purposes of Jurisdiction.
Section 7, paragraph v.—(*Contd.*)	or forms parts of such an estate and is recorded in the Collector's register as separately assessed with such revenue; and such revenues permanently settled.		of Chapter XI of this volume.	such land.
	(*b*) Where the land forms an entire estate, or a definite share of an estate paying annual revenue to Government or forms part of such estate and is recorded as aforesaid, and such revenue is settled but not permanently;	*Ad valorem*, on ten times the revenue payable.	(*b*) „ „	(*b*) If the revenue is not permanently settled—thirty times the revenue assessed on such land.
	(*c*) Where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue and not profits have arisen from the land during the year next before the date of presenting the plaint;	*Ad valorem*, on fifteen times the net profits.	(*c*) Rule I (*c*) and rules 3 and 6 of Chapter XI of this volume.	(*c*) Fifteen times the net pofits.
	but where no such net profits have arisen therefrom.	*Ad valorem*, on value fixed by Court with reference to value of	Rule I, clause (*d*) and rules 3 and 6 of Chapter XI of this volume.	Market value.

		similar land in the neighbourhood,		
	(*d*) Where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as above mentioned.	Market-value of the land.	(*d*) Rule I, clause (*d*) and rules 3 and 6 of Chapter XI of this volume.	(*d*) „
	(*e*) Where the subject-matter is a house or garden.	According to the market value of the house or garden.	(*e*) Section 3, rule I, clause (*e*) and rules 3 and 6 of Chapter XI of this volume.	(*e*) in the case of a garden, the market-value. In the case of a house, the market-value presumably, but this must be left to judicial decission.
Section 7, paragraph vi.	In suits to enforce a right of pre-emption.	According to the value (computed in accordance with paragraph v of this section) of the land, house or garden in respect of which the right is claimed.	The same as for section 7, paragraph v; and rule 2 of section 3 and Chapter XI of this volume.	As for section 7, paragraph v, except as to a house, for which as above.
Section 7, paragraph vii.	In suits for the interest of an assignee of land revenue.	Fifteen times the net profits as such for the year next before the date of presenting the plaint.	Section 8.	The same as in column 3.
Section 7, paragraph viii.	In suits to set aside an attachment of land or of an interest in land or revenue.	According to the amount for which the land or interest was attached.		

1	2	3	4	5
Value of suits for the purpose of computing Court-fee under the Court-fees Act, 1870.			Value for the purpose of determining the Jurisdiction of the Court, under the Suits Valuation Act, 1887, and the Rules and directions made thereunder.	
Court-fees Act.	Nature of suit.	Value of for court-fee purposes.	Suits Valuation Act and Rules.	Value for purpose of Jurisdiction.
	Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest.	..	Section 8.	The amount for which attached, not exceeding the value of the land and interest.
Section 7, paragraph ix.	In suits against a mortgagee for the recovery of the property mortgaged; and in suits by the mortgagee to foreclose the mortgage or, where the mortgage is made by conditional sale, to have the sale declared absolute.	According to the principal money expressed to be secured by the instrument of mortgage.	Section 3 and rules so far as they apply.	The case of attachment of a house is not provided for, and must be left to judicial decision.
Section 7, paragraph x.	In suits for specific performance.	According to the amount of the consideration.	Section 8 does not apply.	No Provision is made, and the value must be left to judicial decison.
	(*a*) of a contract of sale.		(*a*) Section 8.	(*a*) the same as in column 3.
	(*b*) of a contract of mortgage.	According to the amount agreed to be secured	(*b*) „	(*b*) „

	(*c*) of a contract of lease.	On the amount recoverable in the first year.	(*c*) „	(*c*) „
	(*d*) of an award.	According to the amount or value of the property in dispute.	(*d*) section 3 and rules under section 3.	(*d*) as regards land, as valued by the rules under section 3 vide rule 5, in regard to other property presumably the market value, but this is left to judicial decision as S. 8 does not apply.
Section 7, paragraph xi.	In suits between landlord and tenant as described in clauses (*a*) to (*f*) inclusive.	Amount of rent for the preceding year.	Section 8.	*Note.*—The suits in this paragraph mostly fall under the Punjab Tenancy and Land Revenue Act, where any such suit falls under the Civil Law, the value for court-fee purposes would be one year's rent, and for jurisdiction the same. The paragraph appears only relate to land.
Schedule II, Articles 1-13.	Miscellaneous applications and Petitions.	As fixed in each case*		
Schedule II, Article 14.	Petition under Native Converts Marriage Dissolution Act.	Fixed value of stamp required Rs. 5.		
Schedule II, Article 17.	Plaint or memorandum of appeal in each of the following suits:—	The Court-fees Act lays down a minimum fixed fee of Rs. 10. But in rule 1 of Chapter X the High Court under powers conferred by section 9 of the Suits Valuation Act VII of 1887, and with the	....	No jurisdiction value necessary.
	I. To alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court.		....	„
	II. To alter or cancel any entry in a regieter of the names of pro-		As to land—section 4 and section 3 and rules.	As in coulmn 4.

*Added by the Court-Fees (Punjab Amendment) Act, 1922, VII of 1922.

1	2	3	4	5
Value of suits for the purpose of computing Court-fee under the Court fees Act, 1870.			Value for the purpose of determining the Jurisdiction of the Court under the Suits Valuation Act, 1887, and the Rules and directions made thereunder.	
Court-fees Act.	Nature of suits.	Value of for court-fee purposes.	Suits Valuation Act and Rules.	Value for purposes of Jurisdiction.
Schedule II, Article 17—(*Contd.*)	prietors of revenue-paying estates. III. To obtain a declaratory decree where no consequential relief is prayed. IV. To set aside an award. V. To set aside an adoption. VI. Every other suit where it is not possible to estimate at a money value the subject-matter in dispute, and which is not otherwise provided for by this Act.	previous sanction of the Local Government has directed that suits of the nature described under head V and certain suits falling within the scope of head VI of article 17. Schedule II of the Court-fees Act shall, for the purposes of that Act, be treated as if their subject-matter were of the value of Rs. 200 on which the fee is Rs. 22-8-0 under Punjab Act, VII of 1922.	—— Other suits—and provided for. " " Section 9, rule 5, Chapter X of this volume. Section 9, rule I (iv.) Chapter X of this volume. Section 4 and section 3 and rules and section 9, rules 1 and 4, Chapter X of this volume.	" " " " " Same as I—column 3, and failing this where no value is expressed it must be left to judicial decision.
Schedule II, Article 18.	Application under Scheduld II, paragraphs 17 and 18, of the Code of Civil Procedure.	Fixed Value of stamp required Rs. 10.	As to land section 4, section 9, rule 5, Chapter X of this volume.	As in column 4.

Schedule II, Article 19.	Agreement under Order XXXVI, Rule I, of the same Code.			*Note.*—The Court having jurisdiction is specified in the special laws in question.
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* Added by the Court-fees (Punjab Amendment) Act, 1922, VII of 1922.

MADRAS.

(1) *In a suit to recover lands in which there are wells,* the valuation for the purposes of the suit should be based on the value of the lands only and the wells should not be separately valued.

(2) *If an appeal is preferred by a plaintiff,* the stamp fee will ordinarily be calculated on the claim or portions of the claim disallowed by the lower Court. If an appeal is preferred by a defendant, the stamp fee will ordinarily be calculated on the amount adjudged by the lower Court, provided that the parties are at liberty to relinquish a portion of their claim on expressing their intention of so doing in the Memorandum of Appeal.

(3) The fee chargeable on appeal from orders under clause (*c*) of section 244 of the Code of Civil Procedure of 1882 (now section 47 of the Code of 1908) shall be limited to the amount chargeable under Article II of the Second Schedule to the Court-Fees Act, 1870.

(4) *Valuation in certain classes of suits under the Malabar law.*—As the subject-matter of suits comprised in the classes of suits mentioned in clauses (*b*) and (*c*) of paragraph IV of section 7 of the Court-Fees Act, 1870, *viz.*, suits for the removal of a karnavan or ejaman or for the enforcement of a right as karnavan, ejaman or member of a tarwad governed by the Marumakkatayam or Alyasantana system of law or of a Nambudari illom does not admit of being satisfactorily valued, the value of the subject-matter of all such suits and appeals in such suits, instituted or presented on or after the 1st day of March, 1903, shall be determined according to the following rules:—

(*i*) The subject-matter of a suit for the removal of a karnavan or ejaman or for the enforcement of a person's right as karnavan or ejaman of a tarwad governed by the Marumakkatayam or Alyasantana system of law or of a Nambudari illom, shall, for purposes of the Court-Fees Act, 1870, and the Suits Valuation Act, 1887, be valued at one-third of the amount at which the same would be valued under the provisions of the Court-Fees Act, 1870, if the suit were one brought by a stranger for the recovery of the whole property—moveable and immoveable—possessed by the tarwad or illom to which the suit relates.

(*ii*) The subject-matter of a suit for the enforcement of a person's right as a member of a tarwad governed by the Marumakkatayam or Alyasantana system of law or of a Nambudari illom, shall, for purposes of the Court-Fees Act, 1870, and the Suits Valuation Act, 1887, be valued at the amount at which, if the whole of the tarwad or illom property were by the consent of all equally divided among all the members (including the plaintiff) of the tarwad or illom, the plaintiff's share would be valued, with reference to the valuation of the suit under the Court-Fees Act, 1870, if the suit were one brought by a stranger for the recovery of the whole property —moveable and immoveable—possessed by the tarwad or illom.

(*iii*) In all such suits, the plaintiff or appellant shall state in the plaint or memorandum of appeal, as the case may be, the amount at which he values the entire property of the tarwad or illom and such valuation, unless the Court has reason to believe the valuation is not made *bona fide,* shall be accepted by the Court.

THE GANJAM AND VIZAGAPATAM (ACT XXIV OF 1839) AGENCY RULES.

Valuation of Suits.

Rule 2. (1) The valuation of a suit or appeal will be made according to the provisions of the Court-Fees Act, 1870, as amended by Madras Act of 1922 and of the Suits Valuation Act, 1887. The Court may admit, without payment of institution fee, any suit or appeal other than a suit or

appeal brought to recover compensation for loss of caste, libel, slander, abusive language or assault, if satisfied that the plaintiff or appellant is not able to pay: provided that if the applicant was allowed to sue or appeal as a pauper in the Court from whose decree the appeal is preferred, no further inquiry in respect of his pauperism shall be necessary unless the appellate Court sees cause to direct such enquiry.

(2) Where the pauper succeeds in the suit or appeal instituted by him, the Court may direct the recovery of the amount of Court-fees or of such portion thereof as the Court may deem fit.

Jurisdiction of Courts.

Rule 3. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature, excepting suits of which their cognizance is either expressly or impliedly barred.

Rule 4. Claims to succession to or of any interest in the states of any chief, or to any pension or grant of money or land revenue conferred or made by the British or any former Government shall not be entertained in any Court. Such claims shall be inquired into by the Agent to the Governor or Government Agent, as the case may be, and he shall submit the result of the inquiries for the orders of the Government who may pass such orders as they think fit.

(*Note.*—Claims to pensions and grants of money or land revenue are governed by the provisions of the Pensions Act, XXIII of 1871.)

Rule 5. (1) Agency Munsifs shall have cognizance of suits for moveable or immoveable property not exceeding in value Rs. 500 but shall not have cognizance of any suit in which any Zemindar, Bissoyee or any Mansubdar, Muttadar or other feudal hill chief may be concerned:

Provided that the Agent to the Governor or the Government Agent, as the case may be, or Agency Divisional Officer having jurisdiction may transfer any suit in which a hill chief is concerned if both parties desire such transfer or consent thereto and if the value of the suit does not exceed Rs. 500 to the Agency Munsif within whose local jurisdiction the cause of action has arisen for disposal by him:

Provided also that the Agent to the Governor or the Government Agent, as the case may be, with the sanction of the Government, may authorise, any Agency Munsif by name to take cognizance of suits up to any amount not exceeding Rs. 3,000 in value.

(2) Suits cognizable by an Agency Munsif shall be instituted only in the Court of the Agency Munsif having jurisdiction.

Rule 6. With the exception firstly of suits which are cognizable by Agency Munsifs and secondly of the suits described in Rule 7, all suits shall be instituted in the Court of the Agency Divisional Officer having jurisdiction.

Rule 7. Suits of a value exceeding Rs. 5,000 or for revenue paying land of which the value of the annual produce exceeds Rs. 500 shall be instituted in the Court of the Agent to the Governor, or the Government Agent as the case may be.

C.—RULES FRAMED BY THE JUDICIAL COMMISSIONER'S COURT AT NAGPUR.

(*Judicial Commissioner's Civil Circular, Part II-8, page* 15.)

VALUATION OF SUITS.

1. Under section 9 of the Suits Valuation Act, 1887, and under the same section of the said Act as applied to Berar, the Judicial Commissioner with the previous permission of the Chief Commissioner directs that suits

of the following classes shall for the purposes of the Court-Fees Act, 1870, the Suits Valuation Act, 1887, the Central Provinces Courts Act, 1904, and the Berar Courts Law, 1905, be treated as if the subject-matter of such suits were of the value of Rs. 400:—

(1) Suits for the restitution of conjugal rights, for declaration of the validity of marriage, or for a divorce.

(2) Suits for the custody or guardianship of a minor.

(3) Suits for a declaration that an adoption is valid or invalid:

Provided that if a suit for declaration that an adoption is valid or invalid affects a title to property, then the value of that property, if it exceeds Rs. 400, shall be deemed to be the value of the subject-matter of the suit.

2. In exercise of the powers conferred by section 3 of the Suits Valuation Act, VII of 1887, as applied to the Hyderabad Assigned District and with the previous sanction of the Governor-General in Council, the Resident is pleased to make the following rules for determining the value of land for the purpose of jurisdiction.

I. In suits for the possession of land (mentioned in section 7, paragraph V, of the Court-Fees Act, VII of 1870) the value of the land for the purpose of jurisdiction shall be deemed to be as follows:—

(1) When the land is held on settlement for a period not exceeding 30 years and pays the full assessment to the Government a sum equal to ten (twelve half by amendment No. 19, dated 19—7—1924) times the survey assessment.

(2) When the land is held on permanent settlement for any period exceeding 30 years and pays the full assessment to the Government a sum equal to twenty times the survey assessment.

(3) When the whole or any part of the annual survey assessment is remitted, a sum computed under paragraph (1) or paragraph (2) of this rule, as the case may be, in addition to twenty times the assessment or the portion of assessment so remitted.

(4) In other cases, the market-value of the land.

II. Where the land falls partly under one and partly under another of the classes mentioned or referred to in Rule I the value of the land in each class shall be separately calculated.

III. In suits to enforce a right of pre-emption in regard to land (mentioned in section 7, paragraph 6 of the Court-Fees Act, VII of 1870), to value of the land shall be computed in accordance with Rule I.

IV. In suits for specific performance of an award in regard to land (mentioned in section 7, paragraph 10, clause (*d*) of the Court-Fees Act, VII of 1870) the value of the land shall be computed in accordance with Rule I.

3. Numerous cases have come under notice in which suits for an injunction, for an easement, or for an account have been treated as suits of which it was not possible to estimate the money value.

Under section 7, clause (*iv*) (*d*) to (*f*) of the Court-Fees Act, the plaintiff must in all such cases state the amount at which he values the relief sought and the plaint must be stamped in accordance with that valuation.

4. The effect of section 7, clause (*viii*), of the Court-Fees Act, is apt to be misunderstood. It seems to apply only to cases when the plaintiff had not petitioned the Court which ordered the attachment, but has proceeded at once to file a regular suit. When an attachment has been petitioned against the executing Court, and the petition has either been allowed or disallowed and a suit has been filed by the unsuccessful party under

Rule 63, Order 21 of the Code of Civil Procedure, such suit is one for a declaratory decree and the plaint should therefore bear a stamp of ten rupees in respect of the declaration or each of the declarations sought for.

5. It must be borne in mind that when two or more reliefs are asked for in the same suit, a separate Court-fee should be charged in respect of each relief.

6. It is expected that careful attention will be paid to the question of Court-fees. The stamp on all plaints should be examined, and Courts should satisfy themselves that the right fee has been levied in each case.

7. The following rule for determining the value of land in Central Provinces for purpose of jurisdiction in the suits mentioned in the Court-Fees Act, 1870, section 7, paragraph V (*b*) has been made by the Local Government in exercise of the power conferred by section 3 of the Suits Valuation Act, VII of 1887:

In suits for possession of land mentioned in section 7, paragraph V (*b*) of the Court-Fees Act, 1870, the value of land for the purpose of jurisdiction shal be deemed to be as follows:—

Where the land forms an entire estate or a definite share of an estate, paying annual rent to Government or where the land forms part of such estate and is recorded as aforesaid and such revenue is settled, but not permanently 12½ times the revenue so payable.

8. In all cases in which pleaders' fee are to be calculated upon a value other than the value as determined for the computation of Court-fees a note to this effect should be made at the end of the judgment. In the absence of such note all Muharrirs attached to Civil Courts who are entrusted with the drawing up of decrees are strictly prohibited from calculating pleaders' fee otherwise than on the value as determined for the computation of Court-fees.

In suits by a mortgagee, to foreclose the mortgage, no note need be recorded. The pleaders' fee should be calculated in the plaint as due under the mortgage.

RULES FRAMED BY THE OUDH CHIEF COURT.

In supersession of notification No. 779, dated June 18, 1889, the Chief Court with the previous sanction of the Government, hereby under section 9 of the Suits Valuation Act, directs that the following classes of suits shall be treated for the purpose of the Court-Fees Act, 1870, and of the Suits Valuation Act, 1887, as if their subject-matter were of the value hereinafter stated:—

I. (*i*) Suits in which the plaintiff sues the other party to an alleged marriage, either alone or with other defendants, for restitution of conjugal rights .. .. value Rs. 100.

(*ii*) Similar suits to establish, annul, or dissolve a marriage .. .. value Rs. 200.

(*iii*) Suits to establish a right to the custody or guardianship (including guardianship for the purpose of marriage) of a minor .. .. value Rs. 200.

(*iv*) Suits to establish or annul an adoption or appointment by customary right of an heir .. .. value Rs. 400.

Value.

(*a*) for the purpose of the Court-Fees Act,
suits of class (*i*), Rs. 100.
suits of classes (*ii*) and (*iii*), Rs. 200.
suits of class (*iv*), Rs. 400.

(*b*) For the purpose of the Suits Valuation Act, 1887, such sum exceeding Rs. 500 and not exceeding Rs. 2,000 as the plaintiff shall specify in the plaint.

Explanation.

(1) Classes (*i*) and (*ii*) do not include petitions under any special Act relating to the dissolution of marriage.

(2) Class (*iii*) does not include proceedings under the Guardians and Wards Act (VIII of 1890).

II. Suits for declaration that an alienation of immoveable property made by a person alleged to have only a restricted power of alienation becomes void on such person's death or after some other determinate period.

Value.

(*a*) For the purposes of the Court-Fees Act, 1870, as determined by that Act;

(*b*) For the purposes of the Suits Valuation Act, 1887:

(1) When the alienation is by a written instrument which declares the value of the interest purporting to be created, or the consideration for which the alienation is made, such value or amount;

(2) In other cases, the market-value at the date of institution of the suit of the property alienated, subject in either cases to the provisions of Part I of the Suits Valuation Act, 1887, and of the rules in force under the said part, so far as those provisions are applicable.

Explanation.—When the property alienated is right of occupancy in land, the value shall be deemed to be half the value of the land discharged from such right of occupancy.

III. Suits for account only, not being suits for such amount as may be found due on liquidation of accounts, and suits for account and administration as described in Order 20, rule 13 of the Code of Civil Procedure:

Value.

(*a*) For the purposes of the Court-Fees Act, 1870, as determined by that Act.

(*b*) For the purposes of the Suits Valuation Act, such amount exceeding Rs. 100 and not exceeding Rs. 500, as the plaintiff may state in the plaint.

IV. Suits for declaration (whether or not an injunction or damages be also claimed) that any of the following rights exists or does not exist, namely—

a right of way,

a right to open or maintain or close a door or window or a drain or a wanter-shoot (*parnala*),

a right to or in a water-course or to use of water,

a right to build, to raise or alter or demolish a wall or to use an alleged party wall or joint staircase.

Value.

(*a*) For the purposes of the Court-Fees Act, 1870, as determined by that Act;

(*b*) For the purposes of the Suits Valuation Act, 1887,

(1) if damages are not claimed, such amount exceeding Rs. 100 and not exceeding Rs. 500, as the plaintiff may state in the plaint,

(2) if damages are claimed, the amount of such damages increased by Rs. 100.

V. Suits in which the plaintiff in the plaint seeks to set aside an award, and applications to file in Court an agreement to refer to arbitration or in award in a matter referred to arbitration without the intervention of a Court under paragraphs 17 and 20 of the Second Schedule of the Code of Civil Procedure. When or in so far as the award or the agreement relates to property:

Value.

(*a*) For the purposes of the Court-Fees Act, 1870, as determined by that Act.

(*b*) For the purposes of the Suits Valuation Act, 1887, the market-value of the property in dispute, subject to the provisions of Part I of the Suits Valuation Act, 1887, and of the rules in force under the said part, so far as those provisions are applicable.

VI. The foregoing rules are subject to the following explanation:—

Subject to Rule III, a suit falling within any of the above descriptions shall not be deemed to be excluded therefrom merely by reason of the plaint seeking other relief in addition to that described in any of the foregoing rules.

Value of Suits.—In cases where the rules made by the chief Court under section 9, Act VII of 1887 (*see* the preceding rule), modify the provisions of the Court-Fees Act, VII of 1870, the former must be followed. Those cases are given below:—

Oudh Rules.	Court Fees Act.
(*i*) For establishing, annulling, or dissolving a marriage, Rs 200—Rs. 15.	Schedule II, Art. 17, vi. Where it is not possible to estimate at a money-value the subject-matter in dispute, Rs. 10.
(*ii*) For custody or guardianship of a minor, R. 200—Rs. 15.	As above Rs. 10.
(*iii*) For annulling an adoption, Rs 400—Rs. 30.	Schedule II, Art. 17, v. To set aside an adoption, Rs. 10.

Title

Author

Accession No.

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